

VOL I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

R. Lawton McIntosh, Circuit Court Judge

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OCT 30 2014

S.C. Supreme Court

NOEL MICHAEL LYLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000474

APPENDIX

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
5 -vs-) TRANSCRIPT OF RECORD
6 Noel Lyles,) 2009-GS-42-2199-2201;4540
7 Defendant.) November 9, 12, 13, 2009
8) Spartanburg, South Carolina
9

10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE; and a jury
12
13

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1 (Proceedings November 9, 2009)

2 THE COURT: All right. We are here in the matter of
3 the State vs. Noel Lyles.

4 Mr. Lyles has been charged by the state in Indictment
5 2009-2199 with the crime of kidnapping and armed robbery;
6 he's charged in Indictment 2009-2200 with aggravated
7 assault and battery; and he is charged in Indictment
8 2009-2201 with grand larceny; and Indictment 2009-4540 with
9 possession of a stolen vehicle.

10 Mr. Poole, you represent Mr. Lyles?

11 MR. POOLE: Yes, sir, I do.

12 THE COURT: Have the record reflect the solicitor is
13 present, and Mr. Lyles is also present.

14 Are there any matters we need to address before jury
15 selection, Mr. Poole?

16 MR. POOLE: Yes, sir, Your Honor.

17 I spoke with Mr. Lyles and met with him on Friday for
18 the first time. He has been served with a notice of the
19 state's attempt to impose a life-without-parole sentence
20 based upon his prior record and based upon the kidnapping
21 and armed robbery charges.

22 I spoke with him, as I said, on Friday. I gave him
23 discovery materials. We discussed the case. And Mr. Lyles
24 has indicated to me today that he feels that he needs
25 another attorney to represent him on these charges. And I

1 believe he needs to express to the Court his concerns about
2 the lack of time that he's had with me. I believe those
3 are the issues that he would like to address the Court
4 about.

5 THE COURT: All right. Mr. Lyles.

6 THE DEFENDANT: Your Honor, due to the fact I was just
7 served the indictments this previous Friday, know what I'm
8 saying, I had got a notice in the mail from S. C. D. C.
9 It'd been like maybe a week prior to me coming up here from
10 S. C. D. C. Friday. And right now I'm consulting with him
11 on short notice and not being able to really prepare myself
12 for a defense. That's why I'm requesting a continuance,
13 just to give me enough time to maybe find a, find me an
14 attorney, a paid attorney, and prepare myself for that
15 defense.

16 THE COURT: Well, when were you arrested on these
17 charges?

18 THE DEFENDANT: I was arrested on these charges back
19 in March.

20 THE COURT: March of 2009?

21 THE DEFENDANT: Yes, sir.

22 It wasn't two weeks later I was sent, I was sent to S.
23 C. D. C. I been inside S. C. D. C. ever since on probation
24 violation in 2009.

25 ~~My intent was to stay up here and try to get these~~

1 charges took care of all at one time, the probation
2 violation, and that's before I even knew that the
3 solicitor's office had even attempted to go to the grand
4 larceny to upgrade, what I'm saying, strong arm robbery to
5 armed robbery and kidnapping, which I had no awareness of
6 until I, until two weeks ago. And I just came up here
7 Friday from S. C. D. C.

8 THE COURT: All right. But you've had since March
9 to --

10 THE DEFENDANT: March. I didn't even have, I didn't
11 have the motion and discovery in, in March. I didn't even
12 know, I didn't even know what the evidence was that the
13 solicitor's office was claiming they had against me in
14 March.

15 THE COURT: All right. Well, Mr. Poole you've had
16 discovery, and you, I assume --

17 MR. POOLE: Yes, sir.

18 THE COURT: And when were you provided with discovery?

19 MR. POOLE: I was provided discovery on an ongoing
20 basis.

21 THE COURT: Since?

22 MR. POOLE: Prior to and through last week.

23 THE COURT: All right. And have you conducted your
24 own independent investigation into the facts and evidence
25 in this matter?

1 MR. POOLE: I've looked at the facts and the evidence
2 through the discovery.

3 I have not taken any trips out to the alleged sites as
4 I saw no need to. I think that I have enough information
5 to, to work this case.

6 THE COURT: All right. So you are prepared to go
7 forward with the defense of Mr. Lyles' case?

8 MR. POOLE: Yes, sir.

9 THE COURT: Do you know of anything else that you
10 could do if you had more time to prepare?

11 MR. POOLE: No, sir. I'm not aware of any witnesses
12 that could be called or anything that's outside of what's
13 already been provided or what I'm aware of.

14 THE DEFENDANT: Evidently he hasn't done much to look
15 at my, my side, my motion in discovery because there's,
16 there's witnesses there that's in, that's in that motion,
17 discovery that I would like to have present myself, not,
18 not, not the ones he was saying appointed from, from the
19 victim and the statements that were gave from the victim.
20 It's just the witnesses I would like to have present myself
21 that I found out that gave statement to, to the
22 investigator's office.

23 THE COURT: Well, what witnesses do you have that you
24 want Mr. Poole to bring to court?

25 ~~THE DEFENDANT: There's a Troy Berry that claims, that~~

1 got locked up in the same night that was in the vehicle
2 with me.

3 THE COURT: All right.

4 THE DEFENDANT: And I would like to have him present.

5 THE COURT: He's on the witness list. So he'll be
6 here.

7 Who else? What other witnesses do you have that you
8 want Mr. Poole to have here?

9 THE DEFENDANT: Whoever this witness is that the
10 investigator says that on -- that I supposedly picked up
11 on, in front of the Blue Orchid somewhere in Inman, do you
12 know what I'm saying, on the same night, whoever this
13 witness was that gave them this evidence who claimed that
14 he sent the, sent the officers in the direction that I was
15 in, I was at, Startex, which is in, was Street.

16 THE COURT: All right. Well, let's do this.

17 We're going to recess for lunch. We'll come back here
18 at 2:30.

19 In the meantime, Mr. Poole, you and Mr. Lyles just sit
20 and have a discussion and find out what witnesses that he
21 needs here and what witnesses might be beneficial.

22 If they're not already on this witness list, then
23 we'll have to determine who there and where they are and
24 see what their relevance might be before we can go any
25 further.

1 So what else is there, Mr. Lyles, that you want to
2 address with the Court?

3 THE DEFENDANT: That's pretty much it, you know what
4 I'm saying, like it's just the witnesses I would like to
5 have present, the ample amount of time, do you know what
6 I'm saying, just sitting down and prepare somewhat of, of a
7 defense.

8 But like I told him just now, just going to give me an
9 indictment on Friday and then think you're going to rush me
10 into trial on Monday, I am, I'm not, I'm not, I'm not
11 prepared for that. What I'm saying I'm letting that be
12 known. I'm not mentally prepared for that right now.

13 THE COURT: Well, please understand, Mr. Lyles, that
14 unless there's an issue of mental illness or insanity --

15 THE DEFENDANT: That's not my case, that's not, that's
16 not the case.

17 THE COURT: Well, I understand. So the state's not
18 going just to wait --

19 THE DEFENDANT: It's not, it's not that.

20 THE COURT: Let me finish, please.

21 So the state is calling these cases because they come
22 up in a particular order based upon the age and other
23 factors.

24 But nobody's going to wait until you determine that
25 you are mentally prepared to go forward with this case. Do

1 you understand that?

2 THE DEFENDANT: Yeah, I understand that.

3 THE COURT: That's not the way this works.

4 We'll determine whether or not Mr. Poole is prepared
5 to represent you after lunch when y'all discuss any
6 potential witnesses that you want him to have. We'll
7 address that after lunch.

8 What other matters do you have that you need to
9 address with me?

10 (No response.)

11 THE COURT: Okay. All right. Court is in recess
12 until 2:30.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Mr. Poole, have you had now,
15 have you now had time during your lunch recess to talk with
16 Mr. Lyles about any potential witness he might wish to
17 have, or have you determined it's necessary to present his
18 defense?

19 MR. POOLE: Your Honor, I attempted to speak with
20 Mr. Lyles as instructed by the Court right before the
21 break.

22 I spoke with Mr. Lyles asking him about witnesses. He
23 again expressed his dissatisfaction with me as his lawyer
24 and said that he didn't want me to represent him and that
25 he was not prepared to go forward. I was not able to get

1 any information about other witnesses.

2 THE COURT: Mr. Lyles, you heard what Mr. Poole just
3 told me. Is what he stated true?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Okay. Do you not wish for Mr. Poole to
6 represent you in this case?

7 THE DEFENDANT: Yes, sir. I was not --

8 THE COURT: You don't wish to have Mr. Poole as your
9 lawyer?

10 THE DEFENDANT: No, I don't.

11 THE COURT: All right. Do you have someone else
12 that's going to represent you today in this case?

13 THE DEFENDANT: Not really. I would like -- Ms. Kathy
14 Hodges is not available. That's who I would like to
15 consult with as an attorney.

16 THE COURT: All right. Well, Ms. Hodges also works in
17 the public defender's office.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: She's not been assigned to your case.
20 Mr. Poole has. So if you wish to have a lawyer from the
21 public defender's office it will be Mr. Poole.

22 Do you have any other lawyer that you want to hire or
23 pay yourself to assist you in this case?

24 THE DEFENDANT: Yeah. I'm trying, I'm trying to get
25 my family now, trying to find some money.

1 THE COURT: Do you think they'll be able to do that
2 within the next five or ten minutes?

3 THE DEFENDANT: No.

4 THE COURT: Do you wish to represent yourself in this
5 case?

6 THE DEFENDANT: No.

7 THE COURT: All right. Well, there are three choices
8 that you have.

9 You can represent yourself if you want to. You tell
10 me you don't. You can hire a lawyer, have one retained,
11 and they will need to get here right quickly. Or you can
12 have Mr. Poole assist you. So those are the three choices.

13 THE DEFENDANT: I'm not satisfied with any of the
14 above, know what I'm saying.

15 THE COURT: I understand. You've told me that.

16 THE DEFENDANT: Myself.

17 THE COURT: You've told me you weren't satisfied.

18 THE DEFENDANT: The three choices out there, Your
19 Honor, I'm putting them out there again. So I'm not going
20 to allow Mr. Poole to represent me.

21 THE COURT: Mr. Lyles, I understand that.

22 Mr. Lyles, do not interrupt me when I'm talking to
23 you. I'm letting you tell me what you need to. So when
24 I'm talking you don't interrupt me.

25 You see, a court reporter is taking this down, and she

1 can't do that if everybody is talking at the same time.

2 Now, what else would you like to tell me right now?

3 I'm going to let you finish, and then I'll have my say.

4 THE DEFENDANT: Once again, Your Honor, I don't want
5 Mr. Poole to represent me.

6 THE COURT: Okay. Well, don't keep telling me the
7 same thing over and over. Okay? Do you have something new
8 you'd like to tell me?

9 THE DEFENDANT: Once again, I do not want Mr. Poole to
10 represent me.

11 THE COURT: How many times do you think you need to
12 say that? Have you said it enough now, sir?

13 THE DEFENDANT: Yes.

14 THE COURT: Okay. As I've stated, you have three
15 choices. You may not like them, but these are the only
16 choices that you have.

17 You can have your own lawyer of your choosing here
18 today; you can represent yourself; or you can have
19 Mr. Poole. Those are the three choices.

20 Now, which one are you picking?

21 THE DEFENDANT: None.

22 THE COURT: You don't have that choice, Mr. Lyles. Do
23 you have another lawyer here?

24 THE DEFENDANT: None.

25 THE COURT: Do you have another lawyer here?

1 THE DEFENDANT: No, Your Honor.

2 THE COURT: Are you going to represent yourself?

3 THE DEFENDANT: No, Your Honor.

4 THE COURT: Okay. Then the choice is Mr. Poole.

5 Thank you.

6 Have a seat.

7 THE DEFENDANT: The choice is not Mr. Poole --

8 THE COURT: That's the choice you made; that's the
9 choice you just made.

10 THE DEFENDANT: -- sitting beside me. I don't want.
11 I don't need him. Do I need to give you a reason why? I
12 don't need him, someone that comes and gives me a motion
13 for discovery two days and think you're going to rush me in
14 front of a jury two days later? No, Your Honor. I'm not
15 going to do that.

16 THE COURT: Okay. Mr. Lyles, you are --

17 THE DEFENDANT: I'm not going to do that.

18 THE COURT: I understand. You don't control the case.

19 THE DEFENDANT: Do what you need to do. Send me back
20 up out of here. Handcuff me and send me back to the county
21 jail and send me back to the department of corrections.
22 But right now he will not represent me today.

23 THE COURT: Well, Mr. Lyles, I understand that that
24 might be your preference, but you don't get to decide when
25 this case is going to be tried.

1 THE DEFENDANT: Well, I need to be handcuffed and
2 escorted out of the courtroom, Your Honor.

3 THE COURT: We're not leaving the courtroom. We're
4 going to pick a jury, so have a seat. Have a seat,
5 Mr. Lyles. Would you like for me to have you seated?

6 THE DEFENDANT: I'd like to be escorted.

7 THE COURT: Would you like for me to have you seated?
8 Sit him in the chair.

9 Now, I'll tell you one thing. You cut up and you'll
10 find out.

11 THE DEFENDANT: Man, you're not intimidating me, how,
12 Cole. I been 18 out of the last 20 years of my life in
13 prison. You're not intimidating me.

14 THE COURT: Yeah. I understand that. I know that.

15 THE DEFENDANT: You're not intimidating me, Cole.

16 THE COURT: I know you're a tough guy.

17 THE DEFENDANT: I'm not a tough guy. I just want the
18 facts here. I just got a motion discovery. Doesn't give
19 me any chance to fight with a defense. You want to rush me
20 in front of a jury two days later with someone I don't even
21 know, an attorney I haven't even talked to for 20 minutes.
22 It ain't going to happen.

23 THE COURT: Okay. Then you can represent yourself
24 since you know so much about it.

25 THE DEFENDANT: No. I don't know so much, but I do

1 know this for a fact, that I do have my legal right to have
2 an attorney to represent me --

3 THE COURT: Yes, sir. You do.

4 THE DEFENDANT: -- to my suiting, to my suiting.

5 THE COURT: Oh, no, sir, not to -- you can if you want
6 to hire one. Who do you want to hire? You can get any
7 lawyer you want to. Who is you're going to hire?

8 THE DEFENDANT: If I did it wouldn't make any
9 difference. You said I don't have but five, I wouldn't
10 have five minutes to get him here.

11 THE COURT: Tell me who you're going to --

12 THE DEFENDANT: You know, you hire me one.

13 THE COURT: Tell me who. I just did -- Mr. Poole.
14 Tell me who you're going to hire.

15 THE DEFENDANT: He ain't my attorney.

16 THE COURT: Tell me who you're going to hire.

17 THE DEFENDANT: He's not my attorney.

18 THE COURT: Okay. Any other matters we need to
19 address?

20 Your, your request is denied.

21 THE DEFENDANT: Well, I'm still continue, I still, I
22 tell don't want. I don't want him close to me.

23 THE COURT: I understand.

24 Any other matters we need to address, Mr. Poole?

25 MR. POOLE: Not really, just except just what's been

1 said. I just feel a little uncomfortable if he doesn't
2 want me. I don't know how --

3 THE DEFENDANT: Well, he didn't know how to represent
4 me from the start. That's why he doesn't know. He didn't
5 know how to represent me from the start. Two days, Your
6 Honor? Let's keep it real.

7 Look at me in my face like you told him a minute ago.
8 Look me in my face and tell me would you think it would be
9 easy for me to run in front of a jury facing a life
10 sentence with an attorney I haven't talk to for ten
11 minutes?

12 THE COURT: Mr. Lyles, I think I understand why you
13 can't get along with any lawyers.

14 THE DEFENDANT: I haven't had no one but him.

15 THE COURT: See, you're too busy --

16 THE DEFENDANT: I haven't had really no one but him.

17 THE COURT: Okay. Well, like I said, we've addressed
18 it. That's it. He'll be representing you or you'll be
19 representing you. Which is that?

20 THE DEFENDANT: Evidently don't really make much of a
21 difference now, Judge.

22 THE COURT: Okay. It doesn't to me. It's your
23 choice.

24 MR. POOLE: I guess that's what I wanted to make
25 clear. Does he want to represent himself or does he --

1 THE DEFENDANT: I do.

2 THE COURT: He says he's not going to represent
3 himself. So that means you'll have to do that.

4 All right. Any other matters we need to address?

5 MR. GOWDY: Not from the state, Your Honor.

6 THE COURT: All right. Are they still picking a jury
7 across the hall?

8 THE OFFICER: Yes, sir. I think so.

9 THE COURT: We'll be at ease while we're waiting for
10 the jury to come over.

11 (Whereupon, a recess was taken.)

12 END OF PROCEEDINGS NOVEMBER 9, 2009

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1 (Proceedings November 12, 2009)

2 THE COURT: All right. Have the record reflect that
3 on Monday we began with addressing matters in the case of
4 the State vs. Noel Lyles.

5 During the course of that hearing the defendant had
6 requested the appointment of counsel or additional counsel
7 or different counsel. And he specifically requested the
8 appointment of Kathy Hodges of the public defender's
9 office.

10 On Monday Ms. Hodges consented to assisting Mr. Lyles
11 in the trial of this case. And so Ms. Hodges is also
12 present and will be representing the defendant, along with
13 Mr. Poole.

14 Ms. Hodges, are there any other matters we need to
15 address prior to jury selection?

16 MS. HODGES: Your Honor, prior to jury selection the
17 one matter that needs to be addressed is a change of venue
18 motion.

19 My understanding is that at the time, that while this
20 case does not involve incidents that occurred at
21 Spartanburg Regional Hospital, there was an incident that
22 occurred at Spartanburg Regional Hospital two days before
23 the incidents in the case that we're here for today.

24 There was quite a bit of publicity. I'm told by my
25 ~~client there was approximately four days of publicity of~~

1 the two incidents back in March of 2009.

2 I'm also informed that there was some additional
3 television coverage. I think it was essentially kinda some
4 of file footage, but there was additional television
5 coverage on Monday that the jurors would have been exposed
6 to.

7 And our concern, Your Honor, is that because of that
8 publicity that Mr. Lyles will not be able to get a fair
9 jury that's not tainted by the pretrial media coverage in
10 this case. And at this point he's asking for a change in
11 venue on that issue.

12 THE COURT: All right. Well, we'll make the
13 determination as to whether or not that is necessary based
14 upon the responses to the voir dire questions we get from
15 the jury panel.

16 MS. HODGES: Yes, sir. And I informed Mr. Lyles, as I
17 also put on the record, I did include a question regarding
18 media coverage in my suggested voir dire questions.

19 THE COURT: Okay.

20 MS. HODGES: Your Honor, as to -- and it's my
21 understanding we did need to mention, but we will need to
22 have a Neil vs. Biggers hearing regarding two photo
23 lineups. And I neglected to mention that to the Court
24 earlier today. But we will need to do that. But that
25 won't infringe on our ability to select the jury.

1 THE COURT: Okay. All right. Any other matters we
2 need to address prior to jury selection?

3 MS. HODGES: Your Honor, the only other thing, I think
4 I would be remiss in not asking the Court to inquire from
5 Mr. Lyles.

6 As the Court knows, I was appointed on Monday
7 afternoon. He and I have spoken. We spoke on Monday; we
8 additionally spoke again yesterday. We spoke briefly this
9 morning.

10 I'll be candid with the Court. While obviously I
11 would prefer more time to be able to prepare, I am capable
12 of going forward with the trial today. I just want to
13 ensure that that -- you know, kind of just for the record
14 regarding any other issues regarding that I have not
15 addressed that need to be addressed with Mr. Lyles.

16 THE COURT: All right. Well, let me ask you this
17 before I do that.

18 Do you know of anything else that you are prevented
19 from doing because of the timeliness of your appointment
20 that you would do if you had an additional week, month, six
21 months for that matter?

22 Do you know of anything else that you would do, or is
23 there anything specifically that you have been hampered in
24 doing because of the amount of time that you had to become
25 familiar with Mr. Lyles' case?

1 MS. HODGES: Your Honor, the only thing that
2 additional time would provide me was just to provide me
3 with the ability to be more concrete in terms of my
4 understanding of the facts of the case.

5 I believe that I understand fully the issues, legal
6 issues, that are involved and fully understand the issues
7 and concerns that Mr. Lyles has.

8 The only thing that would, that more time would
9 provide me would just be the ability to be more firmly
10 grounded in what the facts of the case are just by virtue
11 of the limited amount of time I've had exposure to the
12 case.

13 THE COURT: All right. Well, and of course I guess
14 the record also needs to reflect if it hasn't already
15 Mr. Poole is still representing the defendant, and he has
16 been familiar with the case for some months as I understand
17 it. And he's obviously still involved in the trial of the
18 case.

19 Ms. Hodges, you've discussed with Mr. Lyles about
20 the -- whether or not he has any particular witnesses that
21 were not already on the witness list that he would need for
22 you to contact, talk to, prepare and bring to court?

23 MS. HODGES: I have, Your Honor, and there were no
24 additional witnesses.

25 The one witness that I think is on standby for the

1 state that I have subpoenaed is currently on the state's
2 witness list.

3 THE COURT: And that's a witness that Mr. Lyles had
4 requested that you contact or have available?

5 MS. HODGES: No, sir. I actually did that sua sponte.
6 He did not give me any additional people to ask for. I
7 just ensured that that person was under subpoena just based
8 on my review of the discovery and the facts and statements
9 given in the case.

10 THE COURT: All right. So there are no other
11 witnesses that you are aware of in your discussions with
12 Mr. Lyles that you need to have here for the trial of this
13 case.

14 MS. HODGES: That is correct, Your Honor.

15 THE COURT: And you have also discussed the case, I
16 guess, with Mr. Lyles and Mr. Poole.

17 MS. HODGES: Yes, sir. I've discussed it with both of
18 them.

19 THE COURT: And you've had all of the discovery made
20 available to you?

21 MS. HODGES: Yes, sir.

22 THE COURT: And you're aware of the state's position
23 in the case and what their theory is as to the culpability
24 of Mr. Lyles?

25 MS. HODGES: Yes, sir.

1 THE COURT: Okay. And are you prepared to go forward
2 as you say? You indicated you were. Are you prepared to
3 try this case?

4 MS. HODGES: I am, Your Honor.

5 THE COURT: Okay. All right. Mr. Lyles, have you got
6 anything you want to address with me regarding Ms. Hodges'
7 statements?

8 THE DEFENDANT: No, Your Honor.

9 THE COURT: Okay. All right. Anything else we need
10 to address before the jury is brought in?

11 MR. GOWDY: Not from the state, Your Honor.

12 THE COURT: All right. Tell me if you will where the
13 incident location is alleged to have been for this event.

14 MR. GOWDY: Where the locations took place that were
15 charged in the indictment, Your Honor?

16 THE COURT: Yes, sir.

17 MR. GOWDY: Campobello as it relates to Ms. Sandifer,
18 which is armed robbery, kidnapping and assault and battery
19 of a high and aggravated nature; Lyman as it relates to Ms.
20 Mathis, and grand larceny.

21 Duncan is where he was arrested as it relates if
22 it's -- if there's still an indictment for possession of a
23 stolen vehicle, that would be Duncan.

24 MS. HODGES: My understanding, Your Honor, is while
25 there is still an indictment pending for possession of

1 stolen vehicle, in talking with Mr. Barnette, is that the
2 state is not going to proceed on that indictment as to a
3 charge to be considered by the jury.

4 Obviously, there are facts germane to the issues in
5 the case that involve Duncan and the arrest of Mr. Lyles in
6 Duncan.

7 THE COURT: Well, I think I just have three
8 indictments. I've got the armed robbery and kidnapping in
9 Indictment 2199; I've got aggravated assault and battery in
10 Indictment 2200; and grand larceny in Indictment 2201. Are
11 those the three?

12 MR. GOWDY: Apparently so, yes, sir.

13 THE COURT: Okay. I understand there's a possession
14 of stolen vehicle arising out of this event.

15 MR. GOWDY: There is a possession of stolen vehicle
16 which formed the basis of the stop in Duncan.

17 I think there was some discussion involved, Your
18 Honor, as to whether or not you could go forward on
19 stealing a car and then later possessing that same stolen
20 car.

21 THE COURT: I expect there was some discussion.

22 MR. GOWDY: And I lost. So that's why you have those
23 indictments.

24 THE COURT: Okay. All right. So we have three
25 indictments.

1 All right. Anything else?

2 MS. HODGES: The kidnapping was a direct indictment,
3 Your Honor. And I don't think you all actually got to the
4 point of arraignment on Monday.

5 THE COURT: Well, no. We didn't. I was not aware.

6 But I've got -- well, the indictments in the same -- I
7 mean, the indictment or charge of kidnapping is in the same
8 indictment for that of armed robbery. Were they not
9 submitted to the grand jury at the same time?

10 MS. HODGES: Your Honor, they were submitted to the
11 grand jury at the same time. I understand from just
12 looking at the documents it appears that on the defense's
13 end of the -- in terms of the procedural end of it the
14 indictment --

15 THE COURT: You're saying that he was never charged
16 with it until he was indicted?

17 MS. HODGES: Correct. He was not charged with
18 kidnapping. That was a direct indictment on that charge in
19 count two. The armed robbery was done by warrant.

20 THE COURT: All right. Mr. Lyles, you are charged in
21 three indictments with armed robbery, kidnapping, assault
22 and battery of a high and aggravated nature and grand
23 larceny.

24 And as I understand it from what I'm being told, is
25 that you were arrested and served with warrants for the

1 crimes of armed robbery, aggravated assault and battery and
2 grand larceny. Is that true?

3 THE DEFENDANT: Yeah.

4 THE COURT: You were not served with a warrant for the
5 crime of kidnapping, but the solicitor has submitted an
6 indictment to the grand jury which they have considered and
7 for which they have returned a true bill charging you with
8 the crime of kidnapping.

9 And they allege by way of that indictment that you did
10 here in Spartanburg County on or about March the 7th of
11 2009 unlawfully seize, confine, inveigle, decoy, kidnap,
12 abduct or carry away Amy Sandifer without authority of law.

13 If those facts are established to the satisfaction of
14 a jury beyond a reasonable doubt that would constitute the
15 crime of kidnapping for which you could receive a sentence
16 of 30 years in jail. Do you understand the charge?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Do you understand the potential sentence?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: And, Ms. Hodges, does your client wish to
21 enter a plea of not guilty on that charge?

22 MS. HODGES: Your Honor, he would enter a plea of not
23 guilty and request to be tried by God and country.

24 THE COURT: Okay.

25 MS. HODGES: Your Honor, as a procedural matter,

1 Mr. Lyles does have a prior conviction for burglary in the
2 first degree. And the state has served notice under the
3 recidivist statute to seek life without parole upon a
4 conviction in this case of a qualifying offense, that being
5 either the armed robbery or kidnapping.

6 THE COURT: Okay. Anything else?

7 MS. HODGES: No, sir.

8 THE COURT: Okay. Let's bring the jury panel around,
9 please.

10 Ms. Hodges, have you seen the state's list of
11 potential witnesses? Are there any that we need to add for
12 you?

13 MS. HODGES: No, sir. I believe all -- there was a
14 Mr. Thompson. Is he on the list?

15 THE COURT: Gene Thompson?

16 MS. HODGES: Yes, sir.

17 THE COURT: He is.

18 MR. BARNETTE: Gina Miller was the other one. I don't
19 know if that was on the original list or not.

20 THE COURT: Well, it's not on the original, but I have
21 that. I have --

22 MS. HODGES: I have the original list, Your Honor.
23 There are no additional names other than what's been added
24 by the state to add to the list of witnesses.

25 THE COURT: Gene Thompson and Gina Miller?

Jury qualification

1 MS. HODGES: Correct.

2 THE COURT: Okay.

3 (The following takes place in the presence of the jury
4 venire.)

5 THE COURT: Good morning, ladies and gentlemen of the
6 jury panel.

7 We are ready to begin with jury selection in the first
8 case that's going to require some of your participation
9 here in this courtroom. And the title of that case is the
10 State vs. Noel Lyles.

11 Mr. Lyles has been accused by the state with having
12 committed three or four separate distinct offenses. All
13 are alleged to have arisen out of one particular event or
14 course of events which the state alleges occurred back on
15 March the 7th of 2009.

16 And indictments are the charging documents. They're
17 the means by which any person accused of a crime is brought
18 into this court in order to stand trial. And the
19 indictments serve to put that person on notice as to what
20 crime the state claims they have committed. But the
21 indictments themselves are not proof of anything. They
22 don't establish anything. They're simply the charging
23 paper.

24 By way of these indictments the defendant has been
25 ~~accused of the crimes of armed robbery, kidnapping, assault~~

Jury qualification

1 and battery of a high and aggravated nature and grand
2 larceny.

3 The state alleges by way of these indictments that the
4 defendant, Noel Lyles, did here in Spartanburg County on or
5 about March the 7th of 2009 while he was armed with a
6 pistol, dirk, slingshot, metal knuckles, razor, knife or
7 beer bottle or some other deadly weapon, or while alleging
8 either by actions or words that he was armed while using a
9 representation of a deadly weapon or any object which some
10 person present during the commission of the robbery
11 reasonably believed to be a deadly weapon, and that he did
12 take, steal and carry away from the person or the presence
13 of one Amy Sandifer by the use of force or intimidation
14 certain goods or monies that belonged to Ms. Sandifer. And
15 those goods or property is described as jewelry and
16 electronics.

17 The state alleges he took those items with the
18 intention of permanently depriving the true owner of use
19 and possession of her property.

20 A second count of that indictment also alleges that
21 Noel Lyles did here in Spartanburg County on March the
22 7th of 2009 unlawfully kidnap or abduct one Amy Sandifer
23 without authority of law.

24 By way of a second indictment the state charges the
25 defendant with the crime of assault and battery of a high

Jury qualification

1 and aggravated nature. And that indictment alleges that
2 the defendant, Noel Lyles, did here in Spartanburg County
3 on or about March the 7th of 2009 commit an assault and
4 battery upon Amy Sandifer constituting an unlawful act of
5 violent injury to her person which was accompanied by some
6 circumstance of aggravation.

7 The state alleges a circumstance of aggravation to be
8 the use of a deadly weapon, and/or the intent to commit
9 some felony offense, and/or the infliction of serious
10 bodily injury, and/or there being a great disparity in the
11 physical conditions of the parties, and/or the defendant
12 did beat the victim using a bottle about the head and body.

13 The remaining indictment charges the defendant with
14 the crime of grand larceny, the state alleging that Noel
15 Lyles did here in Spartanburg County on or about March the
16 7th of 2009 take, steal and carry away a 1998 Toyota Tacoma
17 motor vehicle of a value of more than \$5,000 which belonged
18 to Karen Mathis, and that the defendant took that vehicle
19 with the intent to deprive the owner permanently of that
20 property.

21 Now, as to those allegations and as to each of the
22 charges contained in each of those indictments the
23 defendant has entered a plea of not guilty. And a plea of
24 not guilty places upon the state the burden of proving the
25 allegations that they have set forth in each of those

Jury qualification

1 indictments, the burden of proving each of the essential
2 elements that constitute the crimes that are alleged in
3 those indictments; and therefore the burden is upon the
4 state to establish the defendant's guilt to the
5 satisfaction of 12 jurors beyond a reasonable doubt before
6 any such verdict could be returned.

7 And therefore we will be selecting 13 of you. There
8 will be 12 primary jurors and one additional alternate
9 juror.

10 By way of your participation you're simply going to be
11 called upon to listen to the testimony received during the
12 trial of the case and to consider any other evidence that
13 might be introduced during the trial.

14 At the trial's conclusion you'll be asked to go back
15 and to deliberate. And you'll examine and evaluate all of
16 that evidence. From that evidence you will determine what
17 you believe to be the true facts as they relate to these
18 allegations.

19 After you determine what you believe to be the true
20 facts you'll then apply the law that I will have provided
21 you, and you will determine whether or not the defendant
22 has been proven guilty of any crime beyond a reasonable
23 doubt. And if he has, then your verdict would be guilty;
24 and if he has not, then your verdict would be not guilty.

25 Now, before we begin with jury selection I'm going to

Jury qualification

1 be asking you some questions. And the purpose of these
2 questions is to determine if there's some reason why any
3 one of you jurors should not be selected to participate in
4 the trial of this particular case. In other words, does
5 any juror have some reason why you think you could not be
6 fair and impartial and give both sides a fair trial if you
7 were selected as a juror.

8 So as these questions are asked if you need to respond
9 to them, I will ask that you please stand, and I will
10 address those matters with you individually in the event
11 that should become necessary.

12 Now, first of all, I told you in the case the person
13 who accused by the state of having committed these offenses
14 is Noel Lyles.

15 Mr. Lyles, if you will, please stand and face the jury
16 panel so they may see who you are.

17 (Whereupon, the defendant and Mr. Poole and Ms. Hodges
18 stood.)

19 THE COURT: Mr. Lyles is the gentleman standing in the
20 middle. On each side of Mr. Lyles are his lawyers. Kathy
21 Hodges is to your right and to Mr. Lyles' left; Mr. Poole
22 is to Mr. Lyles' right and to your left. And each of
23 those, as I say, are lawyers with the public defender's
24 office. They are representing Mr. Lyles in the trial of
25 this case.

Jury qualification

1 Thank you. Y'all may be seated.

2 The person who is alleged to have been the victim of
3 the armed robbery and the kidnapping and the assault and
4 battery of a high and aggravated nature is Amy Sandifer.

5 Ms. Sandifer, if you will, please stand and face the
6 jury panel so that they may see who you are.

7 (Whereupon, the victim stood.)

8 THE COURT: Thank you. Be seated.

9 And the person who is alleged to have been the victim
10 of the grand larceny, that being the motor vehicle, is
11 Karen Mathis.

12 Ms. Mathis, if you will, please stand and face the
13 jury panel.

14 (Whereupon, the victim stood.)

15 THE COURT: Thank you, ma'am. You may be seated.

16 And presenting the case on behalf of the state is
17 Solicitor Trey Gowdy and Principal Deputy Solicitor Barry
18 Barnette of the circuit solicitor's office.

19 (Whereupon, Mr. Gowdy and Mr. Barnette stood.)

20 THE COURT: In addition to those persons that I just
21 introduced to you I'm going to also recite a list of
22 potential witnesses to be called during the trial of the
23 case.

24 It doesn't necessarily mean that each of these persons
25 will be called as a witness. It just means that they are

Jury qualification

1 potentially witnesses in the case. And so I've got to
2 recite an entire list so in the event that they are called
3 I need to find out if you have any connection with these
4 people. That's the reason for these introductions.

5 I want to find out if any juror is related by blood or
6 marriage or has any close personal, social, business,
7 professional or any other type of relationship or
8 connection with any person who is being identified.

9 So in addition to those who have already been
10 introduced, we also have potential witnesses including
11 Darren Dukes of the Spartanburg County Sheriff's Office;
12 Jason Bryant of the Spartanburg County Sheriff's Office;
13 Lorin Williams of the Spartanburg County Sheriff's Office;
14 Robert Rosenberg, Spartanburg County Sheriff's Office;
15 Tanesha Ballenger, a resident of Lyman; Liza Bryant, a
16 resident of Campobello; Ashley Dile White, a resident of
17 Campobello; Charles White, a resident of Campobello; Troy
18 Berry, who is a resident of where?

19 MR. BARNETTE: Spartanburg, Your Honor.

20 THE COURT: City of Spartanburg?

21 MR. BARNETTE: Yes, sir.

22 THE COURT: Lieutenant J. Hayes, Lyman police
23 department; Danny Hart; J. D. Mathis; C. L. Miller; and
24 Officer Burrell, all police officers with the Duncan police
25 department; Sharon West, the Spartanburg County Auditor;

Jury qualification

1 Yolanda Roderick employed with the department of
2 corrections; David Hogsed with the Spartanburg County
3 Sheriff's Department; John Nix with the Spartanburg County
4 Sheriff's Department; R. L. Shaffer.

5 JUROR NO. 179: Your Honor --

6 THE COURT: Sir?

7 JUROR NO. 179: -- I'm related to Sean Nix by
8 marriage.

9 THE COURT: Okay. Just stand, please, and remain
10 standing. And I will address them all at one time.

11 Okay. Officer R. L. Shaffer with the Spartanburg
12 County Sheriff's Department; Deputy Floyd with the
13 Spartanburg County Sheriff's Department; Hugh Murphy with
14 the Spartanburg County Sheriff's Department; Gene Thompson
15 with the what -- Lyman what?

16 MR. BARNETTE: He's out of Lyman, Your Honor, Lyman
17 police department also.

18 THE COURT: Oh, police department, Lyman police
19 department. I thought you said are a resident.

20 And Gina Miller, a resident of Duncan.

21 So I need to know now if any juror has any connection
22 with any person who has been identified this morning for
23 your benefit. If so, please stand.

24 All right. I'm going to start to my right. I'll work
25 row by row, front to back, and then I'll cross the aisle

Jury qualification

1 and I'll start again row by row, front to back. If you
2 will, give me your name and your juror number.

3 JUROR NO. 23: My name is Forrest W. Burgess.

4 THE COURT: And then tell me how the question relates
5 to you. Just a minute. What's your number?

6 JUROR NO. 23: No. 23.

7 THE COURT: All right. Mr. Burgess, tell me how the
8 question relates to you.

9 JUROR NO. 23: I know several of these gentlemen
10 through my wife. She's a sergeant in Spartanburg County.

11 THE COURT: She's employed with the sheriff's
12 department?

13 JUROR NO. 23: Yes, sir.

14 THE COURT: Okay. And so you know each of the, at
15 least the county deputy sheriffs.

16 JUROR NO. 23: Yes, sir.

17 THE COURT: Do you think you know some of the other
18 officers too, or not?

19 JUROR NO. 23: I heard of them, yes, sir.

20 THE COURT: Okay. And is there anything about that --
21 tell me what your wife's name is.

22 JUROR NO. 23: Dena Burgess.

23 THE COURT: All right. And is there anything about
24 that connection that would in any way interfere with your
25 ability to be fair and impartial if you were selected as a

Jury qualification

1 juror in this case?

2 JUROR NO. 23: No, sir.

3 THE COURT: All right. Thank you. You may be seated.
4 Yes, sir.

5 JUROR NO. 9: Juror 9.

6 THE COURT: All right. How does the question relate
7 to you?

8 JUROR NO. 9: Gina Miller is through the District Five
9 school district.

10 THE COURT: And how do you know Gina Miller?

11 JUROR NO. 9: Kids went to the same school she's
12 taught at, and I worked for little league and for her bus.

13 THE COURT: Okay. And any other connection you may
14 have?

15 JUROR NO. 9: No, sir.

16 THE COURT: Is there anything about that connection
17 that would in any way interfere with your ability to be
18 fair and impartial in this case?

19 JUROR NO. 9: No, sir.

20 THE COURT: Thank you. You may be seated.
21 Yes, ma'am.

22 JUROR NO. 53: Debra Fortner, 53.

23 THE COURT: Who do you know?

24 JUROR NO. 53: Hugh Murphy. I know him through
25 church, and I work with his brother-in-law.

Jury qualification

1 THE COURT: And who is his brother-in-law?

2 JUROR NO. 53: Jim Sclair.

3 THE COURT: All right. And is there anything about
4 those connections that would have any impact upon your
5 decision in this case?

6 JUROR NO. 53: No, sir.

7 THE COURT: Thank you. Be seated.

8 All right. Yes, sir, in the blue jacket.

9 JUROR NO. 179: I'm Juror 179. I'm akin to Sean Nix
10 by marriage. He's my nephew.

11 THE COURT: Okay. And is there anything about that
12 fact or that connection that would in any way interfere
13 with your ability to be fair and impartial if you were
14 selected as a juror in this case?

15 JUROR NO. 179: Your Honor, I believe it may.

16 THE COURT: All right. We will excuse you from
17 service. That's Juror 179. But don't leave yet.

18 All right. Next row. Yes, sir.

19 JUROR NO. 88: Me?

20 THE COURT: You're the only, sir.

21 JUROR NO. 88: Yes, sir. Might I approach the bench?

22 THE COURT: You may, certainly.

23 (Bench conference held off the record with Juror No.
24 88.)

25 THE COURT: Juror 88 is excused. All right.

Jury qualification

1 JUROR NO. 4: No. 4, Sandy Babb. Related to Jason
2 Bryant with the highway patrol by marriage. Just a cousin.

3 THE COURT: And would that have any bearing upon your
4 decision in the case if you were selected?

5 JUROR NO. 4: No, sir.

6 THE COURT: Thank you. Be seated.

7 Next row. Yes, ma'am.

8 JUROR NO. 87: La Toya Irby, No. 87. And I know
9 Tanesha Ballenger. She used to go to my church.

10 THE COURT: And is there anything about that
11 connection that would impair your ability to be fair and
12 impartial in this case?

13 JUROR NO. 87: No. It would not.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NO. 86: Linda Inabinet, No. 86. I know Gina
17 Miller from District Five schools.

18 THE COURT: And is there anything about that
19 connection that would interfere with your ability to be
20 fair and impartial?

21 JUROR NO. 86: No.

22 THE COURT: Okay. Thank you, ma'am. You may be
23 seated.

24 Does any member of the jury panel know of any other
25 person who has not been identified today, but any other

Jury qualification

1 person who is the employed in the 7th Judicial Circuit
2 Solicitor's Office or the 7th Judicial Circuit Public
3 Defender's office? Do you know any person employed in
4 either of those offices? If so, please stand.

5 All right. Your name please, sir.

6 JUROR NO. 142: Russell Prescott, Juror 142.

7 THE COURT: 142. And who is it that you know?

8 JUROR NO. 142: Todd Wilson that works with him, with
9 Trey.

10 THE COURT: Okay. And is there anything about that
11 connection that would in any way impair your ability to be
12 fair and impartial in this case?

13 JUROR NO. 142: Not necessarily. I've got several
14 other friends that are officers as well. I kind of lean
15 pretty strongly towards giving them the benefit of the
16 doubt. I don't know if that applies to this or not. I
17 would think that would apply to this.

18 THE COURT: Well, obviously, it applies. But my
19 question do you think, notwithstanding any preference that
20 you have or opinion that you have, would you be able to put
21 it aside and be fair and impartial in this case if you were
22 selected to serve?

23 JUROR NO. 142: I honestly don't know.

24 THE COURT: Do you think that your preferences
25 would -- are reasonably likely to impair your ability to be

Jury qualification

1 fair?

2 JUROR NO. 142: Yes, sir.

3 THE COURT: All right. We'll excuse you from service
4 in the case. But don't leave yet.

5 That's Juror 142.

6 Yes, ma'am.

7 JUROR NO. 50: Lucille Evans, 50.

8 THE COURT: All right. Who do you know?

9 JUROR NO. 50: Roger Poole.

10 THE COURT: You know Mr. Poole.

11 JUROR NO. 50: Yes. He handled my divorce in 2000 and
12 is related to my exhusband.

13 THE COURT: Okay. And would that have any bearing
14 upon your decision in this case if you were selected?

15 JUROR NO. 50: No, sir.

16 THE COURT: Okay. Thank you. Be seated.

17 Yes, sir.

18 JUROR NO. 84: My name is Hilton Hutchins, No. 84.

19 And I have a friend of mine -- I'm assuming he's still
20 employed with the solicitor's office -- Terry Davis.

21 THE COURT: All right. And would that have any
22 bearing upon your decision in this case if you were
23 selected?

24 JUROR NO. 84: Not at all.

25 THE COURT: Okay. Thank you, sir. You may be seated.

Jury qualification

1 Anyone else need to respond to that question?

2 (No response.)

3 THE COURT: Is there any member of the jury panel who
4 is a member of or you contribute time or money to any type
5 of organizations that might be characterized as law
6 enforcement or victims' advocacy type of groups or law
7 enforcement support types of organizations?

8 And those might include Mothers Against Drunk Drivers,
9 Citizens Against Violent Crime, any safe homes network, the
10 South Carolina Law Enforcement Officers Association, the
11 fraternal order of police, the honorary sheriffs'
12 association, the troopers' association or any other similar
13 type of organization.

14 I need to know if you belong to such or you contribute
15 time or money to any of those types of organizations. If
16 so, I would ask that you please stand.

17 Again, I'll start on the, my right, front row, and
18 work back if you'll give me your name and your number,
19 please. And then tell me how the question relates to you.

20 JUROR NO. 23: No. 23, Forrest Burgess. I contribute
21 money to several of these.

22 THE COURT: Okay. Thank you. Be seated.

23 First row.

24 MS. HODGES: Kevin Morton, Juror 120. I have
25 ~~contributed money to the South Carolina Highway Patrol~~

Jury qualification

1 fund.

2 THE COURT: Okay. Thank you, sir.

3 Yes, sir.

4 JUROR NO. 27: Juror 27, Richard Cartee. I contribute
5 money to the law enforcement, South Carolina Highway Patrol
6 law enforcement.

7 THE COURT: Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NO. 17: No. 17, Kimberly Bridges. I contribute
10 money and donated service time to Safe Homes and Mothers
11 Against Drunk Drivers.

12 THE COURT: Thank you, ma'am. Be seated.

13 Yes, sir.

14 JUROR NO. 78: Derrick Hester, 78. I contribute to
15 the Spartanburg County Sheriff's Department.

16 THE COURT: Thank you. Be seated.

17 Yes, ma'am.

18 JUROR NO. 81: Nancy Holmes, Juror 81. I served on
19 the board of directors of the Safe Home Rape Crisis.

20 THE COURT: Okay. Thank you. Be seated.

21 In this case, as you have been made aware, the
22 defendant is accused of the crimes of armed robbery,
23 kidnapping, aggravated assault and battery, and larceny.

24 The armed robbery and the kidnapping and the
25 aggravated assault and battery is alleged to have occurred

Jury qualification

1 in the community of Campobello.

2 The charge of larceny is alleged to have occurred in
3 the community of Lyman.

4 And I need to know if any member of the jury panel
5 thinks that you have any knowledge of or have been exposed
6 to any knowledge of the facts or circumstances that relate
7 to this particular case.

8 In other words, do you have any knowledge about the
9 case from any person or any other source? And that would
10 include media coverage of any event related to the case,
11 whether it be television, radio or newspaper, as well as
12 whether you've heard anybody engage in a conversation that
13 might relate to the case, or you've had discussions
14 yourself about this case.

15 I just simply need to know if any member of the jury
16 panel has been exposed to any type of information that
17 relates to the case. If so, please stand.

18 All right. I've got two. I'll just start with the
19 lady to my right. And if you will, give me your name and
20 number, please.

21 JUROR NO. 6: Karen Ballenger, six.

22 THE COURT: All right. And tell me what source you
23 believe you have received information from.

24 JUROR NO. 6: A lawyer that was in the courtroom on
25 Monday.

Jury qualification

1 THE COURT: All right. You've heard a discussion
2 about the case or someone that was in the courthouse
3 talking about the case.

4 JUROR NO. 6: Yes. Well, she just discussed --

5 THE COURT: I don't want you to tell me about what she
6 discussed. But you heard a lawyer discussing this case.

7 JUROR NO. 6: Yes.

8 THE COURT: All right. And was it a lawyer involved
9 in this case --

10 JUROR NO. 6: No.

11 THE COURT: -- or just someone else in the courthouse?

12 JUROR NO. 6: No.

13 THE COURT: All right. If you will, let me ask you to
14 step down here, please, ma'am.

15 (Bench conference held off the record with juror No.
16 6.)

17 THE COURT: All right. Juror No. 6 is excused from
18 service in the case.

19 The next juror.

20 JUROR NO. 86: Linda Inabinet, No. 86. I just know
21 about one of the incidents through word of mouth.

22 THE COURT: Through word of mouth?

23 JUROR NO. 86: Yeah. Not anything from the courtroom.

24 THE COURT: Okay. You just had a discussion or
25 overheard a discussion about the case?

Jury qualification

1 JUROR NO. 86: Just when it took place.

2 THE COURT: All right. Ma'am, if you will, let me ask
3 you to step down here just a minute, please.

4 (Bench conference held off the record with Juror No.
5 86.)

6 THE COURT: Juror No. 86 is also going to be excused
7 for purposes of this case.

8 Anyone else think you have heard, seen or read
9 anything that relates to this case or this particular
10 defendant? If so, please stand.

11 (No response.)

12 THE COURT: Has any member of the jury panel or any
13 member of your immediate family -- and I'm going to define
14 an immediate family member as a parent, a spouse, a child
15 or a sibling -- a parent, spouse, child or sibling -- I
16 need to know if you or any members of your immediate
17 families have ever been the victim of or have ever been
18 accused of the commission of any type of crime that
19 involved a physical assault, a larceny, a robbery or a
20 kidnapping.

21 I need to know if any juror or any members of your
22 immediate family have ever been the victim of any similar
23 type of an event or ever been accused of having committed
24 any similar type of crime. If so, please stand.

25 All right. Does everyone understand the question?

Jury qualification

1 And those who understand the question, are you all standing
2 that need to respond?

3 Okay. I'll start to my right and I'll work across.
4 Now, you can answer the question where you are. If you'd
5 prefer not and you had rather come down here, feel free to
6 do so. So I'll leave that up to you. But I will begin
7 with you, ma'am, if you'll give me your name and juror
8 number, please.

9 JUROR NO. 5: Debbie Baer, five.

10 THE COURT: All right. How does the question relate
11 to you?

12 JUROR NO. 5: I've been robbed.

13 THE COURT: And was someone charged with that robbery?

14 JUROR NO. 5: No. They never caught them.

15 THE COURT: All right. And is there anything about
16 that experience that you've had that would in any way
17 interfere with your ability to be fair and impartial in
18 this case?

19 JUROR NO. 5: Absolutely not.

20 THE COURT: All right. Thank you. You may be seated.
21 Yes, sir.

22 JUROR NO. 158: Greg Sherbert, No. 158. I've had
23 numerous occasions where someone has entered my home or
24 facility and taken things here in Spartanburg County.

25 THE COURT: All right. And is there anything about

Jury qualification

1 those personal experiences that you've had that would in
2 any way interfere with your ability to be fair and
3 impartial in this particular case?

4 JUROR NO. 158: No, sir.

5 THE COURT: Thank you. You may be seated.

6 Yes, sir.

7 JUROR NO. 69: Harold Hammett, 69. House was
8 burglarized about three months ago.

9 THE COURT: And was anybody arrested for it?

10 JUROR NO. 69: Yes, sir.

11 THE COURT: Has the case been resolved?

12 JUROR NO. 69: No, sir.

13 THE COURT: It's presently pending?

14 JUROR NO. 69: Excuse me?

15 THE COURT: It's now pending?

16 JUROR NO. 69: The last I heard he's still just being
17 held. I don't know what --

18 THE COURT: So it's pending. It's not been deposed
19 of.

20 JUROR NO. 69: Right.

21 THE COURT: All right. Is there anything about that
22 experience that would in any way interfere with your
23 ability to be fair and impartial in this case?

24 JUROR NO. 69: No, sir.

25 THE COURT: Thank you. You may be seated.

Jury qualification

1 All right. I'll start on the, I guess that's --

2 JUROR NO. 13: Me?

3 THE COURT: Yes, ma'am.

4 JUROR NO. 13: Melodie Bogan, No. 13.

5 THE COURT: Okay.

6 JUROR NO. 13: I was involved in an armed robbery and
7 kidnapping. My parents, my sister --

8 (Pause for juror coughing.)

9 THE COURT: Just a minute. I notice we have to cough
10 every now and then. So I need for you to pause so I can be
11 sure everybody can hear.

12 All right. You were involved in a robbery and a
13 kidnapping?

14 JUROR NO. 13: I was the victim. My mom and dad and
15 myself and my sister and my brother-in-law were.

16 THE COURT: And was someone charged?

17 JUROR NO. 13: Yes.

18 THE COURT: Has that case been resolved?

19 JUROR NO. 13: Yes.

20 THE COURT: All right. And is there anything about
21 that event or that experience that would affect your
22 ability to be fair and impartial in this case?

23 JUROR NO. 13: Yes, it would. It was very traumatic
24 for me at the time.

25 THE COURT: Okay. Well, that's all I need to know.

Jury qualification

1 The answer is yes. We will excuse you from service in the
2 case, but don't leave yet, please.

3 All right. Next row. Yes, ma'am.

4 JUROR NO. 81: May I approach the bench?

5 THE COURT: You may. Sure. You are Juror 81.

6 JUROR NO. 81: Eighty-one, Nancy Holmes.

7 (Bench conference held off the record with Juror No.

8 81.)

9 THE COURT: Juror No. 81 is excused.

10 Yes, ma'am.

11 JUROR NO. 146: Juror 146. May I please approach the
12 bench?

13 THE COURT: Yes, ma'am.

14 (Bench conference held off the record with Juror No.

15 146.)

16 THE COURT: All right. Let's -- has everybody on that
17 row been talked to?

18 The very next row.

19 JUROR NO. 105: May I approach?

20 THE COURT: Yes, ma'am. Tell us what your name is.

21 JUROR NO. 105: 105, Debra Lawing.

22 (Bench conference held off the record with Juror No.

23 105.)

24 THE COURT: Next lady.

25 JUROR NO. 61: Trena Gary, 61. I have an immediate

Jury qualification

1 family member that was convicted of a violent crime.

2 THE COURT: And is there anything about that
3 circumstance that would affect your ability to be fair and
4 impartial in this case?

5 JUROR NO. 61: No, sir.

6 THE COURT: Thank you. You may be seated.
7 Next.

8 JUROR NO. 63: Lawrence Gault, Juror No. 63. Sir, my
9 wife was a victim of a robbery.

10 THE COURT: And is there anything about that
11 circumstance that would affect your ability to be fair and
12 impartial?

13 JUROR NO. 63: Yes, sir. It is.

14 THE COURT: All right. We'll excuse you from service
15 in the case.

16 That's Juror No. 63.

17 All right. Next row, you, sir.

18 JUROR NO. 157: 157, Conway Sexton. May I approach
19 the bench?

20 THE COURT: You may.

21 (Bench conference held off the record with Juror No.
22 157.)

23 THE COURT: Yes, ma'am.

24 JUROR NO. 19: Nineteen. May I approach, please?

25 THE COURT: You may.

Jury qualification

1 (Bench conference held off the record with Juror No.
2 19.)

3 THE COURT: Next.

4 JUROR NO. 148: 148, Beth Rogers. My house was robbed
5 and my car was taken.

6 THE COURT: And is there anything about that
7 experience that would impair your ability to be fair and
8 impartial?

9 JUROR NO. 148: No.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 137: Susan Phillips. I'm Juror No. 137.

13 I've had a car stolen and items taken from outside storage
14 facilities at my home. And my sister's house has been
15 burglarized on more than one occasion, most recently about
16 two months ago.

17 THE COURT: And is there anything about those facts
18 that would have any bearing upon your decision in this case
19 if you were selected?

20 JUROR NO. 137: No.

21 THE COURT: Thank you. Be seated.

22 Yes, sir.

23 JUROR NO. 95: No. 95. May I approach?

24 THE COURT: You may.

25 ~~(Bench conference held off the record with Juror No.~~

Jury qualification

1 95.)

2 THE COURT: Juror No. 95 is excused from service in
3 the case.

4 Anyone else need to respond to the question, you or a
5 family member having been the victim of or accused of
6 having committed those types of offenses that I previously
7 described? If so, please stand.

8 (No response.)

9 THE COURT: Is there any member of the jury panel who
10 is now or has ever been employed as a law enforcement
11 officer, as well as are you related to any person who is
12 now or has ever been employed as a law enforcement officer?

13 And that would be both civilian, as well as military.
14 And it would be any department that's duties is to provide
15 law enforcement. That would include sheriffs' departments,
16 city police departments, town or municipal law enforcement
17 agencies, department of corrections, county detention
18 facilities, state law enforcement division, F. B. I., any
19 type of law enforcement, probation department, any type of
20 law enforcement officer.

21 If you have been or are now employed as such, or you
22 have a family member, an immediate family member as I
23 described that for you, who is now or has ever been
24 employed as a law enforcement officer, if so, please stand.

25 All right. I'll start over here. Start with you on

Jury qualification

1 the front row, sir. You're?

2 JUROR NO. 120: Juror 120, Kevin Morton. My brother
3 is a police officer for Landrum. And I was a reserve
4 police officer back when I was in college.

5 THE COURT: All right. Thank you.

6 Be seated.

7 Yes, sir.

8 JUROR NO. 23: Twenty-three, Forrest Burgess. My wife
9 is a sergeant for Spartanburg County.

10 THE COURT: Thank you. Be seated.

11 Yes, ma'am.

12 JUROR NO. 168: 168, Wendy Taylor. My husband was
13 previously employed with Spartanburg County correction
14 facility.

15 THE COURT: Thank you. Be seated.

16 Yes, sir.

17 JUROR NO. 27: Richard Cartee, No. 27. I've got a
18 cousin that's on the city police department and a nephew
19 that's on the county police department and got a son who
20 used to be on the North Carolina police department.

21 THE COURT: Thank you. Be seated.

22 Yes, ma'am.

23 JUROR NO. 90: Tammy Jackson, No. 90. My aunt, she's
24 a nurse with North Carolina corrections facility.

25 THE COURT: Thank you. Be seated.

Jury qualification

1 Yes, ma'am.

2 JUROR NO. 53: Debra Fortner, 53. My brother-in-law
3 is a detention officer.

4 THE COURT: Thank you. Be seated.

5 Yes, ma'am.

6 JUROR NO. 133: 133, Terri Pate. My sister is a
7 police officer with the City of Mauldin. And my father was
8 a security police for the military for 25 years.

9 THE COURT: Thank you. Be seated.

10 Yes, ma'am, yes, ma'am, front row, first juror.

11 JUROR NO. 50: Fifty, Lucille Evans. My son-in-law is
12 a state trooper in Cherokee County.

13 THE COURT: Thank you. Be seated.

14 Yes.

15 JUROR NO. 3: I'm Juror No. 3, Edward Atwood. I'm a
16 retired state trooper from Tennessee.

17 THE COURT: Thank you. Be seated.

18 Yes, ma'am.

19 JUROR NO. 18: Juror No. 18. I'm related to several
20 of the sheriff's deputies here in Spartanburg, and I had a
21 brother-in-law that was a policeman for Spartanburg County.

22 THE COURT: All right. Thank you. Be seated.

23 Yes, sir.

24 JUROR NO. 175: Juror 175, Robert Trhlin. Father is a
25 former law enforcement officer, and my son is currently an

Jury qualification

1 M. P. in the United States Marine Corp.

2 THE COURT: Thank you. Be seated.

3 Yes, sir.

4 JUROR NO. 113: 113, Air Force security police.

5 THE COURT: Thank you.

6 JUROR NO. 87: Eighty-seven. My cousin is a police
7 officer in Columbia, South Carolina.

8 THE COURT: Thank you. Be seated.

9 Yes, ma'am.

10 JUROR NO. 137: 137, my cousin works in forensics for
11 SLED.

12 THE COURT: All right.

13 MS. HODGES: I'm sorry, Your Honor. What was her
14 number?

15 THE COURT: 137.

16 All right. Ladies and gentlemen, now, I have
17 introduced to you the defendant and those persons alleged
18 to have been the victims of these events. I've also
19 introduced to you or recited a list of all of the potential
20 witnesses that might be called during the trial of the
21 case.

22 I've also given you a basic understanding as to what
23 the case is about, that is what the allegations are, by
24 having read the indictments and explained to you where
25 these events are alleged to have occurred. And I've

Jury qualification

1 introduced the lawyers to you.

2 So I need to find out now if any juror knows of any
3 reason whatsoever, understanding what the case is about and
4 who the witnesses are, who the parties are, who the lawyers
5 are -- does any juror know of any reason whatsoever why you
6 think you could not be fair and impartial in this
7 particular case if you were called upon to serve as a
8 juror? If so, please stand. If you have any reason
9 whatsoever why you think you could not be fair.

10 (No response.)

11 THE COURT: All right. No jurors have responded.

12 Any other questions requested by the state?

13 MR. GOWDY: No, sir, Your Honor.

14 THE COURT: By the defendant?

15 MS. HODGES: No, sir.

16 THE COURT: All right. Draw us a jury please, ma'am.

17 Now, you may have, I think, already participated in
18 jury selection, or at least some of you, in a civil case
19 this week. Is that true? Civil juries are selected
20 differently than are criminal juries.

21 So in this particular case, since it's a criminal
22 case, it's going to be selected different than what you
23 perhaps were exposed to.

24 Your names are going to be drawn randomly from the
25 pool. And as your name is called you'll be asked to come

Jury qualification

1 forward.

2 You see the desks where the lawyers are seated. If
3 you go to those desks and then take about two steps towards
4 me, turn and face your fellow jurors, each side has an
5 opportunity to have you seated for service in the case or
6 to have you excused from service in the case.

7 If either asks that you be excused you'll simply be
8 going back and having a seat where you are now. If both
9 agree to have you seated for service in the case, then
10 you'll be having a seat in that jury box to your right and
11 to my left.

12 So if you'll please simply come forward as your name
13 is called, you'll be instructed if you're to be seated as a
14 juror in the case or excused from service in the case.

15 THE CLERK: Juror No. 27, Richard Cartee.

16 What says the state?

17 MR. GOWDY: Present the juror.

18 THE CLERK: What says the defense?

19 MS. HODGES: Please excuse the juror in the trial of
20 this case.

21 THE CLERK: Juror No. 61, Trena Gary.

22 What says the state?

23 MR. GOWDY: One moment, Madam Clerk.

24 (Pause.)

25 MR. GOWDY: Present the juror.

Jury qualification

1 THE CLERK: What says the defense?
2 MS. HODGES: Please swear the juror.
3 THE CLERK: No. 99, Stefanie Knapp.
4 What says the state?
5 MR. GOWDY: Present the juror.
6 THE CLERK: What says the defense?
7 MS. HODGES: Please swear the juror.
8 THE CLERK: Juror No. 159, Caroline Slakey.
9 What says the state?
10 MR. GOWDY: Present the juror.
11 THE CLERK: What says the defense?
12 MS. HODGES: Please swear the juror.
13 THE CLERK: Juror No. 82, Anthony Horton.
14 What says the state?
15 MR. GOWDY: Present the juror.
16 THE CLERK: What says the defense?
17 MS. HODGES: Please swear the juror.
18 THE CLERK: Juror No. 67, Michael Green.
19 What says the state?
20 MR. GOWDY: Present the juror.
21 THE CLERK: What says the defense?
22 MS. HODGES: Please swear the juror.
23 THE CLERK: Juror No. 52, Paul Ferguson.
24 What says the state?
25 MR. GOWDY: Present the juror.

Jury qualification

1 THE CLERK: What says the defense?

2 MS. HODGES: Please swear the juror.

3 THE CLERK: Juror No. 18, Rose Briggs.

4 What says the state?

5 MR. GOWDY: Please excuse the juror from service in

6 this case.

7 THE CLERK: Juror No. 126, Richard Newell.

8 What says the state?

9 MR. GOWDY: Present the juror.

10 THE CLERK: What says the defense?

11 MS. HODGES: Please excuse the juror from service in

12 this case.

13 THE CLERK: No. 83, Audrey Huniecutt.

14 What says the state?

15 MR. GOWDY: Present the juror.

16 THE CLERK: What says defense?

17 MS. HODGES: Please swear the juror.

18 THE CLERK: No. 177, Janice Twitty.

19 What says the state?

20 MR. GOWDY: Present the juror.

21 THE CLERK: What says the defense?

22 MS. HODGES: Please swear the juror.

23 THE CLERK: Juror No. 137, Susan Phillips.

24 What says the state?

25 MR. GOWDY: Present the juror.

Jury qualification

1 THE CLERK: What says defense?

2 MS. HODGES: Please excuse the juror in the trial of
3 this case.

4 THE CLERK: Juror No. 170, Michelle Tharpe.
5 What says the state?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says defense?

8 MS. HODGES: Please swear the juror.

9 THE CLERK: No. 127, Willie Norton.
10 What says the state?

11 MR. GOWDY: Present the juror.

12 THE CLERK: What says the defense?

13 MS. HODGES: Please swear the juror.

14 THE CLERK: No. 38, Kathy Culbreth.

15 What says the state?

16 MR. GOWDY: Present the juror.

17 THE CLERK: What says the defense?

18 MS. HODGES: Please excuse the juror in the trial of
19 this case.

20 THE CLERK: No. 101, Joanne Labounty.

21 What says the state?

22 MR. GOWDY: Present the juror.

23 THE CLERK: What says the defense?

24 MS. HODGES: Please excuse the juror in the trial of
25 this case.

Jury qualification

1 THE CLERK: No. 76, Mark Henderson.

2 What says the state?

3 MR. GOWDY: Present the juror.

4 THE CLERK: What says the defense?

5 MS. HODGES: Please excuse the juror in the trial of

6 this case.

7 THE CLERK: No. 100, Karen Krebs.

8 What says the state?

9 MR. GOWDY: Present the juror.

10 THE CLERK: What says the defense?

11 MS. HODGES: Please excuse the juror in the trial of

12 this case.

13 THE CLERK: No. 157, Conway Sexton.

14 What says the state?

15 MR. GOWDY: Please excuse the juror from service in

16 this case.

17 THE CLERK: No. 72, Larry M. Harvey, Jr.

18 What says the state?

19 MR. GOWDY: Present the juror.

20 THE CLERK: What says the defense?

21 MS. HODGES: Please excuse the juror in the trial of

22 this case.

23 THE CLERK: No. 78, Derrick Hester.

24 What says the state?

25 MR. GOWDY: Present the juror.

Jury qualification

1 THE CLERK: What says the defense?

2 MS. HODGES: Please excuse the juror in the trial of
3 this case.

4 THE CLERK: No. 23, Forrest Burgess.
5 What says the state?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the defense?

8 MS. HODGES: Please excuse the juror in the trial of
9 this case.

10 THE CLERK: No. 120, Kevin Morton.
11 What says the state?

12 MR. GOWDY: Present the juror.

13 THE CLERK: What says the defense?

14 MS. HODGES: Please swear the juror.

15 THE JUROR: No. 102, Elizabeth Lark.
16 What says the state?

17 MR. GOWDY: Present the juror.

18 THE CLERK: What says the defense?

19 MS. HODGES: Please swear the juror.

20 THE CLERK: Your Honor, this is for the alternate.

21 THE COURT: All right. This will be for the
22 alternate.

23 THE CLERK: Juror No. 113, Larry McAbee.

24 What says the state?

25 MR. GOWDY: Present the juror.

Jury qualification

1 THE CLERK: What says the defense?

2 MS. HODGES: Please excuse the juror in the trial of
3 this case.

4 THE CLERK: No. 122, Mary Moss.

5 What says the state?

6 MR. GOWDY: Present the juror.

7 THE CLERK: What says the defense?

8 MS. HODGES: Please swear the juror.

9 THE CLERK: Your Honor, the jury selection is
10 complete.

11 (Whereupon, a jury was impanelled.)

12 THE COURT: Those jurors who have been selected, I'll
13 ask you to please go with a bailiff to a jury room. And
14 I'll bring you back in just a few minutes to begin with the
15 trial.

16 (The following takes place outside the presence of the
17 jury.)

18 THE COURT: Are there any matters to be addressed
19 regarding jury selection by the state?

20 MR. GOWDY: Not from the state, Your Honor.

21 THE COURT: By the defendant?

22 MS. HODGES: No, sir.

23 (Whereupon, the remaining members of the jury venire
24 were excused.)

25 THE COURT: Any matters we need to address prior to

Karen Mathis (In-camera)
Direct examination by Mr. Gowdy

1 the jury being sworn?

2 MR. GOWDY: None from the state, Your Honor.

3 MS. HODGES: Your Honor, there is the matter of a Neil
4 vs. Biggers hearing on two photographic lineups that were
5 done that we would challenge the circumstances in which the
6 identifications were made on both of those lineups, one by
7 Ms. Mathis and one by Ms. Sandifer.

8 THE COURT: Okay. Well, let's take -- we're going to
9 take a 10-minute break, and then y'all can get those
10 witnesses available. And we will proceed with those
11 hearings.

12 All right. We will take ten minutes.

13 (Whereupon, a recess was taken.)

14 THE COURT: All right. Are you all ready to proceed?

15 MR. GOWDY: Yes, sir, Your Honor.

16 MS. HODGES: Yes, sir, Your Honor.

17 THE COURT: Okay.

18 MR. GOWDY: Your Honor, the state would call Ms. Karen
19 Mathis.

20 KAREN MATHIS, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. GOWDY

23 Q Good morning, Ms. Mathis.

24 A Good morning.

25 Q I'm going to need you to speak up in a good strong

Karen Mathis (In-camera)
Direct examination by Mr. Gowdy

1 voice where the young lady right beside you can hear every
2 word you say and also the judge can hear every word you
3 say. Okay?

4 A Okay.

5 Q All right. Let's try it. Let's practice. Good
6 morning.

7 A Good morning.

8 Q All right. That's better. Tell the Court who you are
9 and where you live.

10 A I'm Karen Mathis and I live at Street,
11 Wellford, South Carolina.

12 Q I want to go back with you to March the 7th, 2009.
13 Were you -- was your truck stolen at the Lyman Car Wash?

14 A Yes, sir, it was.

15 Q All right. And how long did you have to observe the
16 person that took your truck? How many seconds or minutes
17 or hours did you have to study or look at the person that
18 took your truck?

19 A It was instantly when I seen the pictures out of the
20 six.

21 Q All right. I'm not to the pictures just yet. We're
22 still at the car wash, and you're washing your truck.

23 Okay?

24 A Yes, sir.

25 Q Did somebody come up and start talking to you while

Karen Mathis (In-camera)
Direct examination by Mr. Gowdy

1 you were washing your truck?

2 A Yes, sir.

3 Q How many times?

4 A About three. He asked me could he help me wash the
5 truck.

6 Q So on three different occasions you had a chance to
7 observe somebody at the Lyman Car Wash?

8 A Yes, sir, I did.

9 Q Okay. And the person that asked if he could help you
10 wash your track, is that the same person that got in your
11 truck and took it?

12 A Yes, sir.

13 Q All right. Now, it was a harrowing experience. It
14 was -- it was rattling to have your truck stolen, correct?

15 A Yes, sir.

16 Q Did law enforcement when they first got on the scene,
17 did law enforcement ask you if you felt comfortable looking
18 at a photo lineup?

19 A Yes, sir.

20 Q And what did you tell them the first time they asked
21 you if you felt comfortable looking at a lineup?

22 A I told them right then that I was nervous and that I
23 was sure that the person in the six lineup was Mr. Lyles.

24 Q Okay. Before we get to the lineup, before we get to
25 them showing you the photograph, did another officer ask

Karen Mathis (In-camera)
Direct examination by Mr. Gowdy

1 you if you felt comfortable looking at a lineup and you
2 told them that you were pretty upset at that time?

3 A Yes, sir.

4 Q Okay. So subsequently or later on you were shown a
5 lineup, correct?

6 A Yes, sir.

7 Q I want to show you what's been marked as State's
8 Exhibit 59 and ask you whether or not that is your
9 signature on State's 59.

10 A Yes, sir.

11 Q Is that the photographic lineup that a Lyman police
12 officer showed you?

13 A Yes, sir.

14 Q Did he show it to you fairly soon after the incident
15 had happened?

16 A Yes, sir.

17 Q All right.

18 MR. GOWDY: Your Honor, we would move State's 59 in at
19 this time.

20 THE COURT: Okay.

21 MR. GOWDY: Can I borrow it for one more second, Your
22 Honor?

23 THE COURT: Yes.

24 (Lineup marked State's Suppression Exhibit No. 59.)

25 Q Ms. Mathis, if you have the chronology correct when

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

1 the crime took place, you were rattled, nervous, upset and
2 you didn't feel comfortable making an identification at the
3 time, and later a Lyman police officer brought you this
4 6-person lineup, right?

5 A Yes, sir.

6 Q Did the Lyman officer tell you who to pick?

7 A No, sir.

8 Q Did the Lyman officer even tell you that the person
9 who was stealing your truck was even in this photographic
10 lineup?

11 A No, sir.

12 Q Were you free to pick none of the six?

13 A Yes, sir.

14 Q All right. And did you make a selection?

15 A Yes.

16 Q That's your signature. "I, Karen Mathis, pick
17 photograph No. 3." Are those your initials?

18 A Yes.

19 Q And you picked that photograph, right?

20 A Yes, sir.

21 Q Please answer any questions the defense attorney may
22 have for you.

23 CROSS-EXAMINATION

24 BY MS. HODGES

25 Q Ms. Mathis, when exactly did the officer -- was it the

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

1 same Lyman officer that showed you that talked to you both
2 times about identifying somebody, or was it two different
3 officers?

4 A They were two different ones.

5 Q Okay. Do you remember who the first officer was that
6 came and talked to you about seeing somebody?

7 A I think it was a Hayes.

8 Q Okay. And do you remember when he came to see you?
9 Was it the same day your truck was stolen or a, or a day
10 after your truck was stolen, or do you know when?

11 A It was the day after I think.

12 Q Okay. Because if my understanding is correct, your
13 truck was stolen on a Saturday morning from the Lyman Car
14 Wash?

15 A Yes, ma'am.

16 Q Okay. How -- and I know the solicitor asked you this,
17 but I don't know if we've got that you saw this person, the
18 person came up to you, three times, three times over the
19 course of a couple of minutes, 20 minutes, a couple of
20 hours? How long would you say you actually saw and
21 observed him?

22 A About 20 minutes.

23 Q And then the next day is when Officer Hayes came and
24 talked to you. Do you remember exactly what you told him
25 that day about being nervous about looking at the lineup?

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

- 1 A Yes.
- 2 Q Can you tell us what you remember telling him?
- 3 A I just remember that I was -- told him that I was real
4 upset.
- 5 Q Okay. And was it because you didn't, couldn't
6 remember what he looked like, or what was it that concerned
7 you about being able to look at the lineup?
- 8 A Well, my mother was with me. That was my main
9 concern.
- 10 Q Right.
- 11 A Was my mother. And I got real upset about that.
- 12 Q Okay. And how long after that first day that you told
13 the officer, you set to look at the lineup, when did the
14 second officer come to show it to you?
- 15 A That was on a Monday, I think.
- 16 Q Okay. So it would have been like two days after the
17 truck was stolen.
- 18 A Yes.
- 19 Q Okay. When you talked with the first officer did he
20 show you anything? Did he actually show you the lineup and
21 show you the piece of paper?
- 22 A When I talked to him the first time?
- 23 Q The first time, when the first officer came the next
24 day, the day after your truck was stolen. Did he actually
25 show you the piece of paper?

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

1 A No.

2 Q Okay. So your testimony is the only time you saw the
3 actual lineup was just that one time with the second
4 officer like the Monday after it happened.

5 A Yes.

6 Q Okay. Have you seen any of the television footage or
7 coverage about this incident or about another incident?

8 A About another incident --

9 Q Okay.

10 A -- at the hospital.

11 Q And did you see that prior to looking at the lineup?

12 A Yes, ma'am.

13 Q Okay. And when you saw that television footage did
14 you recognize the person from the television as being the
15 person that stole your truck?

16 A Yes, ma'am.

17 Q Okay. So at that point you had already seen the
18 television footage prior to the officer showing you the
19 lineup the second time or the second officer showing you
20 the lineup.

21 A Yes, ma'am.

22 Q Okay. Had you already seen that television footage on
23 Sunday when the first officer came to talk to you?

24 A Yes, ma'am.

25 Q Okay. And you were too upset at that point to be able

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

1 to make an identification from the lineup on -- when that
2 first officer came to you.

3 A Yes, ma'am.

4 Q Okay. What specifically do you remember the officer
5 telling you when the second officer who actually showed you
6 the lineup, when, when he had the photos there to show you?
7 What specifically do you remember him telling you about the
8 lineup?

9 A He just showed me the lineup.

10 Q Okay. What did he say? Did he? I mean, do you
11 remember what specifically he said in terms of --

12 A He asked me did I recognize any of the six on the
13 lineup.

14 Q Okay. And did he ask you did you recognize any of the
15 six of the lineup as being the person that stole your truck
16 or --

17 A Yes, ma'am.

18 Q Okay. So he actually asked you are any of these six
19 people, do you recognize any of these guys as being the one
20 that stole your truck.

21 A Yes, ma'am.

22 Q Okay. And where did that conversation happen? Was
23 that at your house or the Lyman police department?

24 A The Lyman police department.

25 Q The Lyman police department. I've never been to the

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

1 Lyman police department. Do they have like a separate
2 area, kind of conference room for you to have been able to
3 sit in, or where in the police department?

4 A Yes, ma'am.

5 Q So you were just kind of just you and the one officer.

6 A Yes, ma'am.

7 Q Any other officers there or anything like that?

8 A No.

9 Q Okay. And at the time that you went in to talk to the
10 officers at Lyman at the police department on that Monday,
11 you'd already seen the television footage about what had
12 happened at the hospital.

13 A Yes, ma'am.

14 Q Okay. Had you seen any television footage about what
15 had happened later on that day, the day that the truck got
16 stolen?

17 A No, ma'am.

18 Q So the only television footage you saw was what had
19 happened at the hospital.

20 MS. HODGES: Okay. Beg the Court's indulgence for a
21 moment.

22 (Pause.)

23 Q The -- was there anybody else that you were able to
24 identify from the incident at the car wash? I mean, were
25 ~~you asked to identify anybody else from any other video~~

Karen Mathis (In-camera)
Cross-examination by Ms. Hodges

- 1 footage or cameras or anything like that?
- 2 A Just Tanesha Ballenger.
- 3 Q Okay. So Ms. Ballenger was there, but, but you
- 4 weren't asked to identify anybody else or asked to look at
- 5 like any other video or anything like that, is that right?
- 6 Like if there was a video from the car wash that showed
- 7 your truck being stolen, you weren't asked to look at that,
- 8 were you?
- 9 A Yes, ma'am.
- 10 Q Okay. You did look at that?
- 11 A Yes, ma'am.
- 12 Q And when did you look at that?
- 13 A Monday.
- 14 Q Monday of this week or the same Monday --
- 15 A Monday of this week.
- 16 Q Monday of this week in preparation for court.
- 17 A Yes, ma'am.
- 18 Q Okay. So but you had not seen that prior to picking
- 19 the person out of the photographic lineup.
- 20 A No, ma'am; no, ma'am.
- 21 Q Okay. All right. Were you able to give a description
- 22 to the police officers as to what, what the man was
- 23 wearing, or do you remember?
- 24 A The only thing I remember was that he had a hood on,
- 25 and I think it was red sweatshirt.

Hayes (In-camera)
Direct examination by Mr. Barnette

1 Q Okay. Like a red hooded sweatshirt?

2 A Yes, ma'am.

3 Q Okay. Thank you, ma'am.

4 MS. HODGES: That's all I have, Your Honor.

5 THE COURT: Okay. You may step down. Thank you.

6 MR. BARNETTE: I would like to call Ted Miller to the
7 stand, Your Honor.

8 J. HAYES, having been first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BARNETTE

11 Q Lieutenant Hayes, where do you work at, sir?

12 A Lyman police department.

13 Q And what's your position there, sir?

14 A I am a lieutenant.

15 Q Back when this incident occurred back on March 7th of
16 2009, which department was you working for then, sir?

17 A Lyman.

18 Q And was you involved in the initial car-wash incident
19 that day?

20 A No, sir.

21 Q Was you even working that day?

22 A No, sir.

23 Q Later on did y'all receive information after the
24 defendant was apprehended in the victim's truck?

25 A Yes, sir.

Hayes (In-camera)
Direct examination by Mr. Barnette

1 Q And let me show you what's been marked State's
2 Exhibit 59. Is that a lineup that was done in this case?

3 A Yes, sir.

4 Q And where did you obtain that lineup from, sir?

5 A The Spartanburg County Detention Facility.

6 Q And was it done by their computers up there?

7 A Yes.

8 Q So you didn't even do this lineup.

9 A No.

10 Q And when got that lineup, what date did you go talk to
11 Ms. Amos in this situation, or Ms. Mathis in this
12 situation?

13 A Ms. Mathis. I believe I went on March 9th.

14 Q Okay. So you went out. Did she come and meet you at
15 the police department?

16 A I met her at her house.

17 Q When you met her at her house did you show her this
18 lineup?

19 A Yes.

20 Q And in this lineup did you indicate this person in
21 this lineup, or what did you tell her specifically?

22 A No. I told her before I showed it to her that the
23 person that stole the truck may or may not be in the lineup
24 and if she recognized the person that did steal the truck
25 just to pick him out of the lineup.

Hayes (In-camera)
Cross-examination by Ms. Hodges

1 Q And did she do that?

2 A Yes. She picked picture No. 3.

3 Q And what did you have her do after that?

4 A I had her initial the picture, above the picture. And
5 then she signed the bottom where she stated she picked
6 photograph No. 3.

7 Q Did you suggest anything to her or make any -- point
8 anything out to her or anything like that prior to showing
9 the lineup?

10 A No.

11 Q She picked this out.

12 A Yes.

13 Q Okay. Thank you. If you would please answer any
14 questions that the defense may have for you, sir.

15 CROSS-EXAMINATION

16 BY MS. HODGES

17 Q Lieutenant Hayes, my understanding is that you went to
18 Ms. Mathis' home on March the 9th, is that correct?

19 A I believe it was March the 9th.

20 Q So it basically would have been Monday when you came
21 to work.

22 A Yes. It was a couple of days after the theft.

23 Q Did you know whether, whether another officer had
24 talked with her already about whether she could identify
25 somebody from a photographic lineup?

Hayes (In-camera)
Cross-examination by Ms. Hodges

- 1 A No, I did not.
- 2 Q Okay. Is there a Tony that works for your office?
- 3 A Yes. Officer Raines.
- 4 Q That would be Tony Raines.
- 5 A Yes.
- 6 Q And do you know whether he had any conversations with
- 7 her about whether she could identify from a lineup?
- 8 A Yeah. I read some notes afterwards that he had in the
- 9 report.
- 10 Q Okay. And, in fact, that's -- and writes Danny, I'm
- 11 assuming Danny Hart who also works with the police
- 12 department.
- 13 A Yes, ma'am.
- 14 Q Would that be a correct assumption?
- 15 A Yes, ma'am.
- 16 Q Okay. And, in fact, he indicated that she was too
- 17 upset, couldn't, didn't think that she could be able to
- 18 pick anybody out of, out of the lineup.
- 19 A That's what the note says.
- 20 Q That's what the note says.
- 21 A Yes.
- 22 Q Do you know when that conversation happened, because I
- 23 didn't see a date on the note. So I wasn't sure if you
- 24 might know when that conversation happened.
- 25 A I'm not for sure. I believe it happened on the 7th,

Hayes (In-camera)
Cross-examination by Ms. Hodges

1 the night of the 7th.

2 Q Okay.

3 A The night of the truck being stolen.

4 Q Okay. And did you and Ms. Mathis have any -- did she
5 mention to you any other conversation about having seen the
6 T. V. footage from the incident that occurred at the
7 hospital prior to your showing her the lineup?

8 A No, ma'am.

9 Q And where did y'all have this conversation at -- her
10 house? Was it --

11 A In her driveway.

12 Q In her driveway. Thank you, Lieutenant.

13 A You are welcome.

14 MR. BARNETTE: No further questions, Your Honor.

15 THE COURT: Step down.

16 MR. GOWDY: Your Honor, that is, that would be the
17 state's showing with respect to that identification. We
18 are prepared to go forward with the next identification if
19 you would like us to.

20 THE COURT: Let's do.

21 MR. GOWDY: Your Honor, we would call Ms. Amy
22 Sandifer.

23

24

25

Amy Sandifer (In-camera)
Direct examination by Mr. Gowdy

1 AMY SANDIFER, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. GOWDY

4 Q Good morning.

5 A Good morning.

6 Q I'm going to get you to speak in as good and strong of
7 voice as you can so the court reporter and the judge can
8 hear you. Okay?

9 A Yes.

10 Q Tell the judge who you are and where you live.

11 A I'm Amy Sandifer. I live at Road,
12 Campobello.

13 Q You live in Campobello. All right. I want to go back
14 with you to March the 7th.

15 A Uh-huh.

16 Q Okay. Around suppertime, 6:00 p.m. Were you going
17 for your nightly walk?

18 A I was.

19 Q And what did you take with you when you go on your
20 nightly walk?

21 A I just had my iPod with me.

22 Q All right. So you were listening to music walking
23 down what road?

24 A Rainbow Lake.

25 Q And we won't go into the details at this point, the

Amy Sandifer (In-camera)
Direct examination by Mr. Gowdy

1 specific details. But is it safe to say that you were
2 assaulted by someone?

3 A I was.

4 Q And how long did that assault take place?

5 A Probably over a 10-minute period.

6 Q All right. And did you have an opportunity to observe
7 up close and personal the person who was assaulting you?

8 A I did.

9 Q You had a chance to study his facial features.

10 A I did.

11 Q His height and complexion.

12 A I did.

13 Q All right. You ultimately went home and then to the
14 hospital and were shown a photographic lineup at some
15 point, correct?

16 A Yes.

17 Q How soon after the assault took place were you shown
18 the photographic lineup?

19 A Four and a half hours probably.

20 Q Four and a half hours. Do you recall who showed you
21 the lineup?

22 A Yes.

23 Q Who was it?

24 A Detective Williams.

25 Q ~~Detective Lorin Williams?~~

Amy Sandifer (In-camera)
Direct examination by Mr. Gowdy

1 A Yes.

2 Q All right. Ms. Sandifer, when he showed you the
3 lineup did he tell you that the person who assaulted you
4 was definitely in the lineup and you just had to figure out
5 who it was?

6 A No.

7 Q Did he give you the option of picking no one in the
8 lineup?

9 A He did.

10 Q I want to show you what's been marked as State's
11 Exhibit 60 and ask you whether or not that is your
12 signature on the back and whether or not those are your
13 initials on the front.

14 A Yes.

15 Q That is the photographic lineup that Lorin Williams
16 showed you on March the 7th of 2009, correct?

17 A Yes.

18 MR. GOWDY: Your Honor, we would move State's 60 into
19 evidence at this point.

20 THE COURT: It's admitted.

21 (Lineup marked State's Suppression Exhibit No. 60.)

22 Q How quickly did you identify the perpetrator from the
23 time you were handed the lineup?

24 A Probably about two seconds.

25 Q Two seconds. And you had about ten minutes to

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

1 observe.

2 A Yes.

3 Q And this identification of this photograph took place
4 about four hours after the assault?

5 A Four to four and a half.

6 Q Okay. And you picked photograph No. 1598962?

7 A Yes.

8 Q You initialed it and circled it and then signed it on
9 the back, correct?

10 A That's correct.

11 Q Please answer any questions the defense attorney may
12 have for you.

13 CROSS-EXAMINATION

14 BY MS. HODGES

15 Q Ms. Sandifer, the incident happened approximately
16 6:00 or a little bit after 6:00 -- 6:30?

17 A Closer to 6:00 than 6:30.

18 Q Closer to 6:00 than 6:30. Okay. And I think you just
19 testified to the solicitor that you went home and then to
20 the hospital, is that correct?

21 A That's correct.

22 Q Okay. How long were you at the hospital?

23 A Three and a half to four hours.

24 Q Okay. And then you came from the hospital to --

25 A The sheriff's office.

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

1 Q The sheriff's office. All right. And when you were
2 at the sheriff's office did you go straight to the criminal
3 investigative division?

4 A Yes.

5 Q Okay. And did you take the elevator or go up some
6 stairs to get to that area?

7 A Yes.

8 Q Okay. Had you been in that area before?

9 A Never.

10 Q Because your husband is, works with the sheriff's
11 office, is that correct? And it's my understanding he's on
12 the road patrol.

13 A Yes.

14 Q But you never had had an occasion to be in the
15 criminal investigative division prior to that date.

16 A Not that I, not that I recall.

17 Q Okay. When you got to the criminal investigative
18 division, where did you go? Did they talk to you at a
19 desk, they talk to you in a room, into a conference room?

20 A It was at a desk.

21 Q At a desk like one of the cubicles?

22 A Yes.

23 Q And you saw Mr. Lyles there in the criminal
24 investigative division at the time you were making your
25 photo I. D., is that correct?

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

- 1 A Not before I made my I. D.
- 2 Q All right. But you saw him. He was there in the
3 criminal investigative division at the time you were making
4 your I. D.
- 5 A I don't know when he was brought in.
- 6 Q Okay. But you actually saw him there, didn't you?
- 7 A As I was leaving, yes.
- 8 Q And saw him through the window of the interrogation
9 room that he was sitting in.
- 10 A As I was leaving.
- 11 Q All right. And so both you and he were basically in
12 the same division of the sheriff's office at the same time,
13 I mean, at least as what --
- 14 A He was there when I was leaving.
- 15 Q Okay. And your testimony is you don't know how long
16 he had been there prior to your leaving.
- 17 A That's correct.
- 18 Q All right. How long were you in the criminal
19 investigative division?
- 20 A Probably 15 to 20 minutes.
- 21 Q Okay. Did you do your written statement there?
- 22 A No. I did that at the hospital.
- 23 Q Okay. And so then the only reason that -- was the
24 only reason that you came to the sheriff's office was to
25 look at the lineup?

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

- 1 A Yes.
- 2 Q Okay. They took, they took your shirt into evidence.
- 3 Did they do that at the hospital or at the sheriff's
- 4 office?
- 5 A At the hospital.
- 6 Q But you actually did see Mr. Lyles through a window as
- 7 you were leaving.
- 8 A As I was leaving.
- 9 Q Okay. And that's your testimony, it was as you were
- 10 leaving.
- 11 A Yes.
- 12 Q Okay. Who else was there with you? Was your husband
- 13 with you?
- 14 A My husband.
- 15 Q Okay. And were there other investigators there with
- 16 you?
- 17 A Yes.
- 18 Q Obviously Investigator Williams was there. Were there
- 19 any other investigators?
- 20 A Yes.
- 21 Q Who?
- 22 A Jason.
- 23 Q Jason Bryant?
- 24 A Yes.
- 25 Q Okay. Anybody else that you remember?

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

1 A There were other officers there. I think Officer
2 Dukes was there.

3 Q Okay. Because Officer Dukes actually was the initial
4 officer to respond to your incident.

5 A Yes.

6 Q Were there any of the Duncan police officers there
7 that you remember?

8 A Not that I recall.

9 Q Okay. And how is it that you got to see Mr. Lyles in
10 the interrogation room?

11 A It was on my way out the -- out of the detective
12 division. And there was a window on that door.

13 Q Okay. I mean, did the investigators walk you by that
14 door or --

15 A No. My husband walked me out, and that was by that
16 door.

17 Q Okay. And you just happened to be glancing over there
18 and saw him there, or did somebody tell you that he was in
19 there?

20 A I think I was told that he was in there.

21 Q Who told you he was in there?

22 A I do not recall.

23 Q Do you know whether it was one of the investigators or
24 one of the other officers?

25 A I do not recall.

Amy Sandifer (In-camera)
Cross-examination by Ms. Hodges

1 Q But it wasn't your husband that told you.

2 A No.

3 Q But you were told that he was in there.

4 A I think I asked where he was.

5 Q Okay. And they told you that he was there in the
6 investigative division in that room.

7 A That's right.

8 Q Okay.

9 MS. HODGES: Beg the Court's indulgence for one
10 moment.

11 (Pause.)

12 Q During the course of the evening from the time that
13 the incident happened to, to the time that you got to the
14 sheriff's office to look at the photo lineup, did you have
15 any conversations with your husband or any of the other
16 officers about possible suspects in the case?

17 A No. I gave a description. But as far as possible
18 suspects, I didn't recall any.

19 Q So you gave a physical description of kind of
20 describing sort of height, skin color, clothing, that sort
21 of thing, in terms of -- you didn't know Mr. Lyles before
22 this day, correct?

23 A No.

24 Q Okay. So you gave a description. But, I mean, you
25 didn't have any conversation at all in terms of, you know,

Lorin Williams (In-camera)
Direct examination by Mr. Barnette

1 that they had a suspect or wanted you to look at
2 photographs of potential suspects or anything like that?

3 A No.

4 Q Okay. How long has your husband been involved with
5 law enforcement?

6 A About ten years.

7 Q And have y'all been married that entire time?

8 A Yes.

9 Q And you didn't have any conversation with him at all
10 in terms of whether they had a suspect at that point.

11 A Not that I recall.

12 Q Okay. Not saying that it might not have happened, but
13 you just don't recall.

14 A I don't recall a lot.

15 Q Thank you, ma'am.

16 MS. HODGES: I have nothing further, Your Honor.

17 THE COURT: You may step down.

18 MR. BARNETTE: Your Honor, I would like to call Lorin
19 Williams to the stand.

20 LORIN WILLIAMS, having been
21 first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BARNETTE

23 Q If you could, sir, give your full name for the record,
24 please.

25 A Lorin Williams.

Lorin Williams (In-camera)
Direct examination by Mr. Barnette

- 1 Q Where do you work at, sir?
- 2 A Spartanburg County Sheriff's Office.
- 3 Q And what's your position there, sir?
- 4 A I'm a violent crime investigator with the sheriff's
- 5 office.
- 6 Q Back on March the 7th of 2009 was you involved in the
- 7 investigation involving this defendant?
- 8 A Yes.
- 9 Q And during that investigation did you put together a
- 10 lineup?
- 11 A I did.
- 12 Q Let me let you look at State's Exhibit No. 60. Was
- 13 that the lineup that you put together, sir?
- 14 A Yes, sir.
- 15 Q And was that shown to Ms. Sandifer?
- 16 A It was.
- 17 Q And in showing that to her did you indicate to her
- 18 that the person that did this to her was in this lineup or
- 19 anything of that nature?
- 20 A No, sir.
- 21 Q Did you suggest anything or motion or do any --
- 22 A No, sir.
- 23 Q When you handed it to her did she pick somebody out?
- 24 A She did.
- 25 Q And who did she pick out, sir?

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 A The defendant.

2 Q Okay. Is that -- what did you have her do once she
3 picked out the individual?

4 A Once she picked him out she circled it and put her
5 initials by the, by the picture on the reverse side of the
6 affidavit. I filled out the top part with her name, the
7 date, the photograph she identified, and then had her write
8 in the person she described or the person she picked out as
9 the person she knew as who. And she filled in the rest of
10 it.

11 Q Okay. How quickly did she pick that person out?

12 A Almost immediately.

13 Q If you would please answer any questions the defense
14 may have for you.

15 CROSS-EXAMINATION

16 BY MS. HODGES

17 Q Mr. Williams, where did this, this showing of the
18 lineup occur?

19 A In my cubicle in the sheriff's office.

20 Q And both -- the suspect at that point, and now the
21 defendant, and Ms. Sandifer were in the C. I. D. at the
22 same time.

23 A I'm not sure what time he came in in relation to what
24 time she got there. I know she never saw him if he came in
25 while she was there.

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 I came. Once he was taken into custody, I left the
2 scene and went to the sheriff's office. I was told that
3 she was leaving the hospital and was going to meet us at
4 the sheriff's office.

5 Q He was transported, I assume, not by you from where he
6 was arrested in Duncan.

7 A That's correct. He was transported by a uniform
8 patrol officer.

9 Q Of the sheriff's office.

10 A That's correct.

11 Q And was brought, to your knowledge was brought,
12 directly to the sheriff's office.

13 A He would have been -- he would have been brought to C.
14 I. D. and placed into an interview room, yes, ma'am.

15 Q And those interview rooms are basically along
16 basically what I consider to be the back wall, but one
17 wall, if you will, of the sheriff's office. And their
18 cubicles are sort of in, sort of in the center of the room.

19 A That's correct.

20 Q Okay. Would he have been brought upstairs or would he
21 have been brought up the elevator?

22 A He would have come the elevator.

23 Q Okay. And the elevator essentially will come out sort
24 of from the right-hand side. If you're facing the
25 interview rooms, the elevator comes out from the right-hand

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 side. You're basically taken around into the interview
2 room, is that correct?

3 A Well, if you come up the elevator you would go left
4 and then go through the corridor to the right. And then
5 there's an interview room on the right-hand side and a row
6 of interview rooms on the left.

7 Q Do you know which interview room he was in?

8 A I believe he was to the left.

9 Q Okay. And where is that in relationship to your
10 cubicle?

11 A My cubicle if you -- in relation to that is all the
12 way to the front on the right-hand side of the upstairs
13 portion of C. I. D.

14 Q Okay. But you heard the testimony of Ms. Sandifer
15 that she saw him in C. I. D. in the interview room at some
16 point.

17 A As she said she was leaving, correct, yes, ma'am.

18 Q So, so they were both there in C. I. D. together at
19 some point.

20 A At some point, correct.

21 Q Do you know what time Ms. Sandifer got to --

22 A No, ma'am. I really don't know exactly what time she
23 would have gotten to the, to the office.

24 Q Okay. Were you already at the office when she
25 arrived, or do you remember?

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 A No. I think she got there prior to my arrival.

2 I'm pretty sure when I left the defendant I was told
3 that she was en route from Spartanburg Regional to the
4 office, which we were over off of 290 in Duncan. So I'm
5 sure she would have beaten me there. But I can't tell you
6 exactly.

7 Q Okay. And do you know, was the defendant already
8 there when you got to the office?

9 A I left before they transported him. I'm not sure
10 exactly at what point he got there.

11 Q And do you have any recollection as to how long you
12 were there prior to Ms. Sandifer coming in. I mean,
13 basically how long -- was it when you finally got there and
14 you finally got a chance to meet with her?

15 A No, because I had already prepared the lineup. I was
16 actually on my way to the hospital to show the lineup to
17 Ms. Sandifer when I was notified that they had found the
18 vehicle and the defendant over off, I believe, it was Hilly
19 Hill Road off of 290. And I at that point turned and went
20 over there to the vehicle and to the defendant.

21 Q So you had already, you already had a suspect in mind
22 at the time that, that Mr. Lyles was actually found in the
23 vehicle.

24 A Yes, ma'am.

25 Q And how did you get to have that suspect in your mind?

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 A We, we had already been looking at him because of the
2 physical description and because of the incident that had
3 happened at the hospital.

4 Q Okay. And had he already been identified at the
5 hospital as -- or been identified as the suspect from the
6 hospital?

7 A I don't recall. I don't recall the -- that was in the
8 city. We didn't have, you know, any involvement in that.

9 Q Okay. Did you have any conversations with Officer
10 Sandifer or Deputy Sandifer regarding Mr. Lyles as a
11 suspect?

12 A No, ma'am, not at that point, not at that point. We
13 were more concerned with -- when we got on the scene she
14 was shaken up, and trying to get her to the hospital, we
15 advised him to go with her to the hospital and we would
16 take care of the crime scene and get a lineup put together
17 and meet them either at the office or the hospital. And
18 before we could get to the hospital Mr. Lyles was located.

19 Q Okay. And what specifically did you say to
20 Ms. Sandifer when you showed her the lineup?

21 A Any time I prepare a lineup before I turn it over,
22 before they ever look at it, I tell them we have prepared a
23 photographic lineup, there are six pictures in it. And I
24 always advise them not to pay particular attention to hair
25 styles, facial hair, weight, because we don't know the age

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 of these pictures. Facial hair and hairlines change, and
2 things such as that. And then I tell her that the person
3 that did this may or may not be in the lineup, she just
4 needs to look at it and see if there's anyone in there that
5 she recognizes. And then at that point I will, I will hand
6 it to them.

7 Q And is that what you did in this instance?

8 A Yes, ma'am.

9 Q Okay.

10 MS. HODGES: Beg the Court's indulgence.

11 (Pause.)

12 Q Isn't it true that you actually escorted Mr. Lyles or
13 were with him when he was coming upstairs to see I. D.?

14 A I don't believe so, no, ma'am. I know that I did, I
15 did go into the interview room with him right before he
16 invoked his right to counsel.

17 Q Right.

18 A But I don't recall escorting him in at all, no, ma'am.

19 Q So, and when you went into the interview with him,
20 interview room with him, was that before you met with Ms.
21 Sandifer, or after?

22 A That would have been after I met with Ms. Sandifer.

23 Q So you didn't have -- so you weren't -- did you have
24 any knowledge that he was there at the time you were
25 meeting with Ms. Sandifer?

Lorin Williams (In-camera)
Cross-examination by Ms. Hodges

1 A I don't recall if he was there, you know, when I got
2 there to meet with her or not, no, ma'am.

3 Q And is there any reason why somebody would be going
4 from your cubicle past that interview room that he was in
5 on the way out of C. I. D.?

6 A It would all depend on how they, how they went out. I
7 didn't take her out. So really I don't know. I don't know
8 which way she came in or out.

9 Q Who took her out?

10 A I don't recall. I don't know whether I had already
11 gone in with him or I just -- I don't remember that. But
12 there's, there's two exits out of C. I. D. And from our
13 side of the building out, the closest way out, would, one,
14 be go to the corridor that divided the interview rooms to
15 the elevator, or in front of the interview rooms to the
16 side hall that goes down to the main part of the sheriff's
17 office.

18 Q And you don't have a protocol in terms of kind of
19 escorting victims in and escorting victims out to avoid
20 confrontation in C. I. D.?

21 A No. There would have been no confrontation. I mean,
22 he was, he was in an interview room.

23 Q But she saw him in the interview room.

24 A Yes, ma'am. That's what she stated.

25 Q Okay. All right.

Noel Lyles (In-camera)
Direct examination by Ms. Hodges

1 MS. HODGES: Thank you, Your Honor.

2 MR. BARNETTE: Nothing further, Your Honor.

3 THE COURT: Step down.

4 Anything else?

5 MR. GOWDY: No, sir, Your Honor.

6 THE COURT: All right.

7 MS. HODGES: Your Honor, we would call Mr. Lyles for
8 the purposes of the -- for purposes of this hearing.

9 THE COURT: Okay.

10 NOEL LYLES, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. HODGES

13 Q Mr. Lyles, I'm going to ask you to make sure you speak
14 up loud enough so the judge and the court reporter can hear
15 you. And I want to direct your attention to the night of
16 March the 7th of 2009 after you were arrested by the Duncan
17 police department.

18 Who transported you from that arrest to the sheriff's
19 office?

20 A There were two unknown officers that I didn't, I
21 didn't recall it. That's from the time, from the time they
22 apprehended me until the time, like saying, we got to
23 sheriff's, sheriff's office and then from that point --

24 Q Okay. Let me stop you there.

25 You say two unknown officers. Were they like uniformed

Noel Lyles (In-camera)
Direct examination by Ms. Hodges

1 officers in a marked patrol car?

2 A Yes.

3 Q Okay. And you get to the sheriff's office. Where do
4 you go at that point when you get to the sheriff's office?

5 A I was escorted inside at that point to the sheriff's
6 department through a small breezeway and then up the
7 elevator to upstairs.

8 Q And who is, who escorted you up there?

9 A Detective that was just sitting here.

10 Q Detective Williams who just testified?

11 A Yes.

12 Q Were you with any other officers?

13 A Yes. They was another officer there.

14 Q Was it one of the same officers that had transported
15 you?

16 A Yes. Mr. -- I think Officer Jennings, Jenkins or
17 Jennings, in that nature. That was his name.

18 Q Okay. So, so that officer, that uniform patrol
19 officer, and Detective Williams escorted you up to the
20 criminal investigative division.

21 A Right.

22 Q Okay. And when you got there, did you go into a room,
23 a conference room, sit at a desk? Where did you go?

24 A It was like a small interrogation room.

25 Q Okay. And does that, that room have a, have a door

Noel Lyles (In-camera)
Direct examination by Ms. Hodges

1 with a window in it?

2 A Yes.

3 Q And how long were you sitting in that room prior to
4 seeing Ms. Sandifer, would you say?

5 A Give and take, a good 30 -- 35 minutes at the most.

6 Q And did you see Ms. Sandifer?

7 A Yes.

8 Q All right. Tell us what happened. Tell us about
9 that.

10 A Well, previous, before I seen Ms. Sandifer, the
11 detective came in the room and asked me, you know what I'm
12 saying, about did I want to waive my rights. Know what I'm
13 saying. And then he got into the probation issue about me
14 being on probation and those types of things.

15 Q You need to speak up a little louder because I'm
16 having a hard time hearing you.

17 A Okay. Those type of things that he was asking me
18 first was about the probation and what not. Then he left.
19 Then I sat in that room for a while. Then that's when I
20 see Mr. and Ms. Satterfield (sic).

21 Q Okay. Let me stop you there. And you said at that
22 point they actually had talked to you about whether you
23 wanted to waive your rights to give a statement or not.

24 A Right, right.

25 Q Okay. And that happened before you saw Ms. Sandifer?

Noel Lyles (In-camera)
Cross-examination by Mr. Gowdy

1 A Right. That happened before.

2 Q Okay. And when you saw Ms. Sandifer, tell me what
3 happened.

4 A Well, I seen Mr. Sandifer.

5 Q Okay. You saw him first?

6 A Right. When I see Mr. Sandifer --

7 Q Because you're saying --

8 A Right. I see Deputy Sandifer. He told me, said you,
9 that word, he said you fucking freak, that was my wife that
10 you jumped on.

11 Q Okay. And where was he when he said, when you heard
12 that?

13 A Walking past the room with his wife.

14 Q And was she right there with him?

15 A Yeah.

16 Q Next to him, behind him?

17 A In front of him.

18 Q Okay. And how long after that was it before you went
19 to the detention center?

20 A Fifteen minutes, 15 or 20 minutes tops after that.

21 Q Okay. All right. Thank you. Answer any questions
22 the solicitor might have for you.

23 CROSS-EXAMINATION

24 BY MR. GOWDY

25 Q Mr. Lyles, you don't have any idea whether or not

Noel Lyles (In-camera)
Cross-examination by Mr. Gowdy

1 Ms. Sandifer picked you out of this photo lineup before she
2 saw you, do you?

3 A No, I don't.

4 Q So it doesn't really matter if she saw you afterwards,
5 does it?

6 A I guess to an extent it does matter if she was forced
7 to identify me at the sheriff's department.

8 Q You think she was forced to identify you?

9 A Yeah, along with her husband, I imagine so, because,
10 you know, yeah, to extent, yeah.

11 Q She was forced to identify you.

12 A I would feel that way because --

13 Q By whom, Mr. Lyles?

14 A I don't know. You tell me.

15 Q No. I get to ask the questions. You answer them.
16 Okay?

17 A I sure will. To the best of my knowledge, I will.

18 Q Under the rules. Who forced Ms. Sandifer to pick you
19 out of this photo lineup?

20 A Her husband, any other officer that was there. It's
21 not like that was the first time I had been seen.

22 Q So it is a conspiracy against you.

23 A I wouldn't say it's a conspiracy. What I would say is
24 that I was falsely identified for the simple fact Ms.
25 Sandifer, you know what I'm saying, and Mr. Sandifer, you

Noel Lyles (In-camera)
Cross-examination by Mr. Gowdy

1 know what I'm saying, she seen me, you know what I'm
2 saying, through the, through the window at the sheriff's
3 department.

4 That's the first time she could probably ever say,
5 only open and be truthfully saying, that that's the first
6 time she could ever identify me. It was, it was not
7 through a lineup. She visually identified me in the
8 sheriff's department right there beside her husband, along
9 with the rest of half of Spartanburg law enforcement that
10 night.

11 Q Ms. Lyles, I may have, I may have been inartful in my
12 question to you, so I'm going to try it again.

13 Okay. You have no evidence whatsoever to dispute the
14 fact that she picked you out of a lineup before she ever saw
15 you and in an interview room, do you?

16 A Neither does the defense, you know, if that's the
17 case, because like I'm telling you now, she identified me,
18 you know what I'm saying, through the department, the
19 sheriff's department, a visual I. D. It was no paper
20 lineup. It wasn't nothing showing on film. It was --

21 Q But you don't know whether --

22 A It was a visual. She looked at me. She looked at me
23 in my face, and that's how she said that identified me off
24 the --

25 Q And you don't know whether or not she picked you out

Noel Lyles (In-camera)
Cross-examination by Mr. Gowdy

- 1 of a lineup before that happened.
- 2 A No, no, I don't.
- 3 Q You didn't have any idea, do you?
- 4 A No, I don't.
- 5 Q She very well may have picked you out of this
- 6 lineup --
- 7 A She may very well.
- 8 Q -- before she ever saw you at the sheriff's
- 9 department.
- 10 A She may very well.
- 11 Q Will you agree with me that that is you in that
- 12 lineup?
- 13 A I, I would know myself, yes.
- 14 Q So that's you right there.
- 15 A Yeah.
- 16 Q Will you agree with me that that's you right there?
- 17 A Yes.
- 18 Q That Ms. Mathis picked you out of a lineup.
- 19 A Yes.
- 20 Q Okay.
- 21 MR. GOWDY: That's all I have, Your Honor.
- 22 MS. HODGES: Nothing on redirect, Your Honor.
- 23 THE COURT: You may step down.
- 24 MS. HODGES: Your Honor, that would be our evidence.
- 25 THE COURT: All right. Any argument you'd like to

1 make?

2 MS. HODGES: Your Honor, as to the lineup,
3 photographic lineup, involving the grand larceny and Ms.
4 Mathis' identification, our argument is that the
5 circumstances in which she identified somebody in that
6 lineup is that it rises to the level that should be her
7 in-court identification, and any testimony regarding her
8 out-of-court identification should be suppressed because of
9 the fact that she basically had, number one had, been
10 approached by a law enforcement officer on the day after
11 her incident in which she says that she's too upset to be
12 able to see somebody.

13 Yet at that point she's already seen television
14 footage of an incident that occurs at Spartanburg Regional
15 Hospital in which she says she thinks the person that she
16 sees on T. V. is the same person that she -- that stole her
17 car and that she is basically then at her home in her
18 driveway brought a lineup by a detective or a lieutenant
19 the next day after she based her identification and ability
20 to make an independent identification, has been tainted by
21 the media coverage.

22 As to Ms. Sandifer's identification, Your Honor, you
23 know, the, the biggest concern we have is that the conflict
24 of interest, that kind of is replete through this case
25 dealing with the fact that the defendant and the victim are

1 in the C. I. D. room at the same time, in the division at
2 the same time. She's seeing him.

3 And her testimony today is that, you know, she -- it
4 was as she was leaving. The concern we have, Your Honor,
5 is that, you know, the two of them should never have been
6 in C. I. D. at the same time in the same situation.

7 There would be no question of suggestibility and
8 suggestive taint had, you know had, the case been dealt
9 with either by separate agency or had they not been in the
10 same physical rooms or same physical division at the same
11 time.

12 And, Your Honor, you know, the suggestiveness of that
13 entire proceeding, Your Honor, violates, you know, the
14 standards that have been set in this case. And we would
15 ask that both the identifications be suppressed and that
16 any in-court identification be considered to be tainted by
17 virtue of the problems with the investigation.

18 THE COURT: Okay. Solicitor.

19 MR. GOWDY: Your Honor, may it please the Court.

20 With respect to Ms. Mathis, and, again, I'm looking at
21 the five factors cited in Biggers -- the witness'
22 opportunity to view the suspect.

23 Ms. Mathis testified for about 20 minutes in at least
24 three different encounters at a car wash she had the
25 opportunity to observe and, in fact, talked to this

1 defendant; the second factor being the witness' degree of
2 attention at the time, the accuracy of the witness' initial
3 description with respect to height, race, clothing, the
4 witness' level of certainty making the identification of, I
5 believe, she said she picked him out of a lineup
6 instantaneously.

7 There was no doubt whatsoever. The length of time
8 between the crime and the identification, Your Honor, was
9 two days at the tops.

10 With respect to Ms. Sandifer, there is not one
11 scintilla of evidence to suggest that she saw Noel Lyles
12 before she made the pick.

13 I asked him every way I know to ask somebody, what
14 evidence do you have that she saw you before she made the
15 selection. And he has none other than some broad based
16 conspiracy that he alleged.

17 If you look at the Biggers factors I think both the
18 identification by Ms. Mathis and Ms. Sandifer meeting the
19 Biggers factors, there is no suggestibility.

20 And with respect, Your Honor, to the niche of the
21 media display, that's not a Biggers' analysis. The defense
22 has not established that Ms. Mathis' I. D. is somehow
23 tainted because she watched a television show. There's
24 been no evidence to that whatsoever.

25 ~~THE COURT: All right. Well, as you both know, the~~

1 purpose of a Neal vs. Biggers hearing is for the Court to
2 determine whether or not there was any suggestive procedure
3 employed by police that resulted in an in-court
4 identification by a victim or some other witness of the
5 defendant.

6 In this case the evidence does not establish that
7 there was any suggestive procedure employed by the police
8 that resulted in an identification of the defendant by the
9 two witnesses who have testified. And so the Neal vs.
10 Biggers analysis really is not even applicable because it
11 was not the identification by each of these witnesses of
12 the defendant, was not the result of any suggestive
13 procedure employed by the police.

14 Nevertheless, even if you could believe under some
15 circumstance, or that there is a circumstance, that caused
16 one or both of the witnesses to identify or to make an
17 in-court identification of the defendant, there is no
18 circumstance that has been established that would give rise
19 to a reasonable belief that either of these witnesses has
20 made -- there is a substantial likelihood that they've made
21 a misidentification of the defendant considering the
22 totality of the circumstances as established by the
23 evidence in the case.

24 And therefore because there was no suggestive police
25 procedure employed, but even if so, there is no substantial

1 likelihood of an irreparable misidentification by either of
2 the witnesses based upon the totality of the circumstances,
3 I find that any motion to suppress an in-court
4 identification of the defendant by these witnesses should
5 be denied.

6 All right. What other matters do we have to address
7 before we swear the jury?

8 MS. HODGES: None from the defense, Your Honor.

9 THE COURT: Okay. Bring the jury in and ask
10 Ms. Huniecutt to take the foreperson's seat --
11 Ms. Huniecutt.

12 MR. GOWDY: Your Honor, do you envision doing openings
13 before lunch, or after?

14 THE COURT: I hope so. How long are y'all going to
15 take?

16 MR. GOWDY: Not long.

17 THE COURT: Let's do them before, and we will begin
18 with the testimony after lunch.

19 (The following takes place in the presence of the
20 jury.)

21 THE COURT: All right. Ladies and gentlemen, I
22 apologize for the delay. I had some matters that I had to
23 address. Some related to this case, some did not. But,
24 nevertheless, I had to address those before we could
25 actually begin with the trial of the case that you have

1 been selected to participate in. So I do want to thank you
2 for your patience and understanding in that regard.

3 As you know, you have been selected to decide the
4 verdicts in the case of the State vs. Noel Lyles. You know
5 what he has been charged with.

6 Ms. Huniecutt, I'm going to ask you to serve as the
7 foreperson of this jury. And as the foreperson of this
8 jury you have three specific duties that none of the other
9 jurors will have.

10 Number one, you will be asked to serve as the
11 spokesperson for the jury. And so if during the trial
12 something arises that needs to be brought to my attention,
13 if you'll let the bailiff know, he'll let me know, and I'll
14 address any difficulty or answer any question.

15 Secondly, you're going to be called upon to preside
16 over the jury deliberations when that times comes for jury
17 deliberations simply to ensure that those, the
18 deliberations, are carried in some orderly fashion.

19 And, thirdly, you'll be asked to actually write the
20 verdict or the decision of the jury. And you'll do that on
21 a verdict form that I'll provide you at the trial's
22 conclusion on which you will indicate the jury's unanimous
23 decision as it relates to each of the separate charges.

24 Now, the foreperson has been delegated those specific
25 duties that I have just indicated. That does not however

1 mean that the foreperson is any more important than any of
2 other jurors because the decision of a jury is the
3 unanimous consensus opinion of all 12 jurors. And
4 therefore each of you will have an equal say and an equal
5 vote in what the ultimate decisions in this case will be.

6 Someone simply has to be delegated those
7 responsibilities that I have just indicated, and I have
8 delegated those to the foreperson, Ms. Huniecutt, in
9 appointing her as the foreperson.

10 But each of you jurors are equally important so far
11 the ultimate decisions in the case are concerned, because,
12 as I've stated, the verdicts have to be unanimous. All 12
13 of you must be in agreement.

14 Now, Ms. Moss, you've been selected as an alternate
15 juror. And the function of an alternate is to take the
16 place of one of the original 12 if for some reason one of
17 these original 12 cannot continue to serve for some reason
18 during the trial.

19 And if one is called away, you take that person's
20 place. In that event you become the 12th juror. So it is
21 important that you pay just as careful attention as we ask
22 of all of the jurors in this case because it does occur
23 from time to time for one reason or another one of the
24 original 12 may be unable to continue. In that event you
25 become the 12th.

Jury sworn

1 So we do appreciate your participation as an alternate
2 juror, just as we appreciate the participation of each of
3 you jurors who have been selected for the purpose of
4 deciding the verdicts in this particular case.

5 You may swear the panel.

6 (Whereupon, the jury was duly sworn.)

7 THE COURT: Ladies and gentlemen, as you know, you
8 have been selected to decide the verdicts in the case of
9 the State vs. Noel Lyles.

10 As you also are aware, Mr. Lyles has been accused by
11 the state of having committed four separate and distinct
12 offenses that are alleged to have arisen out of one
13 particular event or a course of events which the state
14 alleges occurred back on March the 7th of 2009.

15 And by way of three indictments -- one indictment
16 contains two charges -- the defendant has been accused of
17 the crimes of armed robbery, kidnapping, assault and
18 battery of a high and aggravated nature and grand larceny.

19 The allegations setting forth those charges are
20 contained in the indictments which have been previously
21 read to you. But these indictments are not evidence of
22 anything, and they're not proof of anything. They're
23 simply the allegations. They're the means by which
24 Mr. Lyles has been brought into this court and formally
25 notified as to what crime the state claims he has

1 committed.

2 As to each of the charges the defendant has entered a
3 plea of not guilty. And as I have told you, that plea of
4 not guilty therefore places upon the state the burden of
5 proving the allegations that they have set forth in each of
6 these indictments, the burden of proving each of the
7 essential elements of each of the crimes alleged against
8 the defendant; and therefore the burden is upon the state
9 to establish the defendant's guilt to the satisfaction of
10 you 12 jurors beyond a reasonable doubt before any verdict
11 of guilty could be returned as to any of the separate
12 charges.

13 Every person accused of a crime is presumed to be
14 innocent of that charge. That presumption of innocence
15 remains with any defendant, as it does with this defendant,
16 from the time that he is placed under arrest and throughout
17 the course of the criminal process and even throughout the
18 course of the actual trial in the case.

19 That presumption of innocence will be with Mr. Lyles
20 even as you go back at this trial's conclusion to begin
21 with your deliberations in the case. And that presumption
22 of innocence will be with him in that jury room, and it'll
23 be with him forever unless you 12 jurors determine that he
24 is no longer entitled to the presumption of innocence.

25 ~~That is after you've carefully considered all of the~~

1 evidence in the case, and from that evidence you've decided
2 the facts, and upon deciding those facts you apply the law
3 that I will have provided you, if you 12 jurors unanimously
4 determine that his guilt as to a particular charge has been
5 proven beyond a reasonable doubt, then he would no longer
6 be entitled to that presumption of innocence as it relates
7 to that charge. But it's only if, unless and until you are
8 satisfied of his guilt beyond a reasonable doubt that the
9 presumption of innocence would no longer be applicable.

10 Now, the way the trial will proceed is that in a
11 moment the lawyers are going to address you in what are
12 called opening statements.

13 There are two occasions in the trial of a case where
14 lawyers are permitted to address the jury. And that is at
15 the beginning of the trial before any evidence has been
16 introduced and then again at the conclusion of the trial
17 after all of the evidence has been received.

18 Please keep in mind however that the lawyers'
19 statements are not to be considered by you as any evidence
20 upon which you will base your decision. And that's because
21 the lawyers aren't witnesses to anything, and they're not
22 going to be telling you anything about this case that they
23 know of their own personal knowledge or perception as
24 witnesses will be.

25 They're not going to take the witness stand. They're

1 not going to testify under oath. They're not going to be
2 subjected to direct and cross-examination as witnesses will
3 be. And therefore what the lawyers tell you in their
4 statements is not to be considered by you as any evidence
5 upon which you will base your decision. But the statements
6 do serve a purpose. And it is important that you give the
7 lawyers your attention as they give you their statements.

8 The opening statements will serve to provide you with
9 a basic understanding as what this case is about from the
10 perspective of both the state and the defendant so that
11 you'll have some context in which to place the evidence
12 that we will be receiving shortly thereafter.

13 The closing statements, which occur after all of the
14 evidence has been received, again, are not evidence. But
15 it does give the lawyers an opportunity to discuss with you
16 the evidence that you have seen and heard during the trial
17 of the case.

18 And through that discussion each will have an
19 opportunity to try to persuade you or to convince you that
20 that evidence does or does not support a particular
21 decision.

22 And it's in between the opening and the closing
23 statements of the lawyers that we actually receive the
24 evidence upon which you will base your factual decision in
25 the case.

1 The state has the burden of proof, as you've been
2 told. So they will go forward first in their presentation
3 of evidence.

4 They have a burden to prove a defendant's guilt beyond
5 a reasonable doubt. A defendant in a criminal trial has no
6 burden of proof, does not have to testify, does not have to
7 call any witnesses, does not have to produce any evidence,
8 because the burden is not upon a defendant to prove that he
9 or she is not guilty because in some instances that might
10 not be possible.

11 The burden is always upon the state because they
12 brought the charge to establish a defendant's guilt to your
13 satisfaction beyond a reasonable doubt.

14 And so in a criminal case a defendant may not testify
15 or produce any evidence. And if a defendant does not
16 testify or produce evidence that is not a fact or
17 circumstance which may be considered by the jury in any way
18 whatsoever in your deliberations or in your determination
19 as to whether or not his guilt has been proven beyond a
20 reasonable doubt. But a defendant is given an opportunity
21 to testify or present evidence if a defendant should wish
22 to do so.

23 So after all of the evidence has been received and
24 after you've heard the final summations of the lawyers, I
25 will then instruct you fully on the law as it relates to

1 the criminal law in general and as it relates to these
2 crimes in particular, after which you will begin with your
3 deliberations.

4 And through that process you're going to be called
5 upon through the exercise of good judgment and common sense
6 conscientiously applied to the testimony and evidence in
7 the case to determine what you believe to be the true facts
8 as they relate to these allegations.

9 And then once you determine what you believe to be the
10 true facts, you will apply the law that I will have
11 provided you. And you will determine whether or not the
12 defendant's guilt as it relates to each of these separate
13 crimes has been proven beyond a reasonable doubt. And if
14 it has, then your verdict would be guilty. And if it has
15 not, then your verdict would be not guilty.

16 Now, all that we're going to ask for you to do is to
17 pay careful attention throughout the course of the trial.
18 Give every witness the same degree of attention as they
19 testify, because sometimes there's a conflict in testimony.
20 And where a resolution of that conflict is necessary in
21 order for you to reach a decision in the case, it's your
22 prerogative to determine what is the most credible and
23 believable testimony.

24 But in order to be in a position at the trial's
25 ~~conclusion to fairly evaluate and assess a witness'~~

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1 credibility you need to have listened carefully and paid
2 attention to each of the witnesses as they testified so
3 that you'll be in a proper position to fairly evaluate a
4 witness' testimony in light of not just that witness'
5 testimony but in light of all of the testimony and all of
6 the evidence received during the trial.

7 And of course it is important that you keep an open
8 mind throughout the course of the trial, which simply means
9 that you are not to begin making up your minds or
10 formulating your opinions as to what you think the ultimate
11 decisions in this case ought to be until all of the
12 evidence has been received, until I have instructed you on
13 the law and until you've been asked to begin with your
14 deliberations. That is the process that is designed for
15 you 12 jurors to arrive at a fair and just decision in this
16 case.

17 So I do want to thank you in advance for your
18 participation, as well as for your careful attention. I
19 would ask that you please give the lawyers your attention
20 now as they give you their opening statements, after which
21 we will recess for lunch. And then we will begin with the
22 reception of evidence after the lunch break.

23 Mr. Gowdy.

24 MR. GOWDY: May it please the Court, Your Honor.

25 March the 7th, 2009, right around noon Karen Mathis,

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1 the young lady in the blue sitting on the first row, is at
2 the Lyman Car Wash with her 83-year-old mama named
3 Ms. Rose.

4 The Lyman Car Wash is one of those do-it-yourself car
5 washes where there are individual bays and you drive your
6 car in there and you put some quarters in it and you wash
7 it.

8 And while Ms. Rose was standing off to the side
9 Ms. Karen Mathis was washing her Toyota Tacoma burgundy
10 pickup truck.

11 And while this process was unfolding the defendant,
12 Noel Lyles, was walking about the Lyman Car Wash, walking
13 in a bay and then out of a bay and interacting with these
14 folks and interacting with those folks.

15 In fact, he came up and talked to Ms. Mathis on a
16 couple of different occasions, said you missed a spot there
17 or you missed a spot here.

18 And then when he came the last time with Ms. Mathis
19 out of the car washing it and 83-year-old Ms. Rose out of
20 the truck, Noel Lyles gets in that Toyota Tacoma burgundy
21 pickup truck, and he takes off.

22 You'll see a surveillance tape. You'll see from a
23 distance someone getting into a burgundy pickup truck. And
24 you'll see that young lady chasing behind him. This was
25 about noon on March the 7th, 2009.

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1 Go forward with me a couple of hours if you will,
2 ladies and gentlemen, to about 6:00 o'clock on March the
3 7th of 2009.

4 Amy Sandifer is going for her nightly walk up in the
5 Campobello community. She takes her car to a spot and then
6 she begins to walk. This is a routine she goes through
7 almost every night.

8 And with her is just her iPod. She's got her iPod on,
9 and she's walking on the roadside, her nightly exercise
10 walk. And it's just about 6:00 o'clock.

11 And a burgundy Toyota Tacoma pickup truck comes this
12 direction and passes her. And she notices it but pays it
13 no mind. And then a few moments later that burgundy Tacoma
14 pickup truck comes back this way, the direction she's
15 walking.

16 And that truck driven by the defendant, Noel Lyles,
17 pulls up beside Amy Sandifer and asks directions or asked
18 about two roads that don't exist in the Campobello
19 community.

20 And sensing something uneasy she begins to back away
21 from the truck. And the defendant, Noel Lyles, gets out of
22 that burgundy Tacoma pickup truck with a glass bottle of
23 beer and says give me all your stuff.

24 In fact, ladies and gentlemen, if you'll forgive my
25 language, exactly what he said was, "Bitch, give me all

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1 your shit."

2 So here's Amy Sandifer on the side of the road with
3 nothing but an iPod. And the defendant gets out of the
4 Toyota Tacoma burgundy pickup truck armed with a glass
5 bottle of beer. And he pushes her with the palm of his
6 hand and he strikes her in the face and knocks her down.

7 She's got nothing except her rings -- her rings and
8 her iPod. And he demands her rings, and she says no. And
9 she's struck with a bottle of beer at least twice. And
10 still she says no.

11 And then he grabs her by the back of her shirt because
12 she's been knocked down. And he starts dragging her
13 towards the woods.

14 And she says okay. She gives Noel Lyles, the
15 defendant, her wedding band, her engagement ring. And then
16 he wants the iPod. So here is Amy Sandifer on the side of
17 the road, Noel Lyles in Karen Mathis' burgundy Tacoma
18 pickup truck leaving the scene with Amy Sandifer's wedding
19 band, her engagement ring and her iPod, March the 7th,
20 2009.

21 Go forward with me just a couple of more hours, about
22 10:00 o'clock. Two Duncan city police officers have been
23 told to be on the lookout. Law enforcement calls it a
24 BOLO, being on the lookout, for a Toyota Tacoma pickup
25 truck, burgundy, belonging to Karen Mathis.

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1 And these two Duncan police officers, they see the
2 car. They execute a car stop. And out of the driver's
3 side comes Noel Lyles driving Karen Mathis' pickup truck.
4 And a law enforcement officer takes out of his pocket Amy
5 Sandifer's iPod.

6 And then when they search that burgundy Toyota Tacoma
7 pickup truck that Noel Lyles is driving on the floorboard
8 they find a wedding band and an engagement ring.

9 Michael Noel Lyles is charged with four very serious
10 offenses -- grand larceny for stealing Karen Mathis' truck
11 from the car wash, kidnapping because you cannot restrict
12 someone's freedom. And when you are dragging them towards
13 the woods, that you have control over them. You have
14 seized them. You are restricting their freedom. Armed
15 robbery because while armed with a bottle of beer, a glass
16 bottle of beer, and striking her with it he takes her
17 rings. And assault and battery of a high and aggravated
18 nature because of the disparity in size and the fact that
19 he was armed and she wasn't.

20 Four serious charges, ladies and gentlemen. But
21 because the case is serious doesn't also mean it can't be
22 straightforward. This is a very straightforward case.

23 Both Ms. Mathis and Ms. Sandifer identified Noel Lyles
24 very soon after he victimized them, picked them out of
25 lineups, photo lineups.

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1 You'll see an in-car video from Duncan where the
2 driver is taken out of the Toyota pickup truck and put on
3 the ground. And you'll see a still photograph that that
4 driver of Karen Mathis' stolen pickup truck was none other
5 than Noel Lyles.

6 Amy Sandifer will tell you that's the man that robbed
7 her, that's the man that assaulted her. Karen Mathis will
8 tell you that's the man that stole her truck. Serious
9 charges, simple straightforward evidence.

10 Ladies and gentlemen, I'm going to ask you in
11 conclusion to do the only thing I ever ask a jury to do in
12 16 years of being a prosecutor.

13 Be fair to the defendant, be fair to the state of
14 South Carolina, and listen to the witnesses examined, and
15 scrutinize the evidence. And above all else use your
16 common sense.

17 The same common sense that served you so well in every
18 other aspect of your life will serve you well as you sit in
19 judgment on these four charges and you seek to find the
20 truth about what this defendant did. And then find
21 justice.

22 THE COURT: Ms. Hodges.

23 MS. HODGES: Thank you, Your Honor. May it please the
24 Court.

25 Ladies and gentlemen, this is Noel Michael Lyles. He

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1 is my client. And he's before you today, as the solicitor
2 said, on some very serious charges.

3 And the judge told you that he is presumed innocent.
4 That phrase, ladies and gentlemen, is the foundation of our
5 criminal justice system. It's something that the
6 solicitor's office, my office, my clients, their law
7 enforcement officers, their victims, it's something that we
8 kind of deal with every day, this presumption of innocence.

9 The thing is, ladies and gentlemen, a lot of times
10 folks look at the presumption and say, well, he's presumed
11 innocent, until, or presumed innocent, but.

12 I submit to you, ladies and gentlemen, that as of
13 right now, this very minute, Mr. Lyles is an innocent man.
14 There's no presumption about it. It's just a fact. He is
15 an innocent man. The state has the burden of proof to
16 prove that he is not. The state has the burden of proof to
17 prove that he is guilty.

18 The facts surrounding this case, ladies and gentlemen,
19 in terms of their ability to be woven into a very
20 compelling dramatic rendering of those facts and telling a
21 story is not to be disputed.

22 No person deserves to have their car stolen; no person
23 deserves to be assaulted; no person deserves to be put in
24 fear of obtaining some sort of serious injury.

25 So anything that I say to you today and tomorrow,

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1 ladies and gentlemen, is not meant to undermine the
2 seriousness of the charges and the seriousness of the
3 allegations, because I think those are without dispute, the
4 seriousness of what we're facing here.

5 The problem, ladies and gentlemen, is that I also have
6 a duty to come to you to show you whether the state has
7 proven the case beyond a reasonable doubt.

8 Each and every crime charged in the State of South
9 Carolina has what we call elements. Those are things that
10 we liken to ingredients if you're baking a batch of cookies
11 or something. If you're baking cookies you've put in
12 flour, you've got to put in sugar, you've got to put in
13 butter. If they're peanut butter cookies you've got to put
14 in the peanut butter.

15 The same thing with charges the state brings. They
16 have to prove certain things to you in order to prove that
17 this case and that the defendant is guilty beyond a
18 reasonable doubt.

19 One of the things in an armed robbery is they have to
20 prove to you that there is the use of a deadly weapon.
21 They have to prove to you that there is the use of
22 something that a person who is armed with, be it a firearm,
23 a knife -- in this case they're alleging a beer bottle --
24 they have to prove to you that that is something that,
25 number one, is a deadly weapon or that somebody is, or that

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1 the person that is using whatever that object is actually
2 telling them that it's a weapon, using it representing it
3 that it's a weapon. And it's got to be reasonable for a
4 person to be afraid of the use of that object as a weapon.

5 For somebody to be kidnapped, ladies and gentlemen,
6 there actually has to be some sort of, as the solicitor
7 says, some sort of confining, confine your movement, and to
8 confine somebody, move somebody, do something.

9 The judge is going to instruct you on the law, ladies
10 and gentlemen, at the end of the trial. There's got to be
11 an actual confinement, movement, something that restricts a
12 person's freedom.

13 Words alone, ladies and gentlemen, can't do it. It's
14 got to be something that actually rises to the level of
15 kidnapping.

16 Assault and battery of a high and aggravated nature.
17 There can be several circumstances that you have to
18 consider, whether it's assault and battery of a high and
19 aggravated nature, or it's simple assault.

20 The prosecutor has to prove the value because the
21 grand larceny, ladies and gentlemen, is actually charged as
22 a value, constructive value, over \$5,000. That's something
23 the state is going to have to prove to you.

24 And the reason why I bring this all up to you is
25 because it's very important that as the fact finders you

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1 hear all the evidence. You're going to see evidence
2 probably in every form we've got these days. You're going
3 to hear witnesses testify to you from the witness stand.
4 You're going to see photographs. You're going to watch
5 some videos.

6 The thing to be paying attention to, ladies and
7 gentlemen, is while a very compelling, dramatic rendition
8 of the facts can be given to you to compel you to think
9 that this is a horrible case and therefore Mr. Lyles just
10 absolutely must be guilty just by virtue of the charges
11 that are against him, your duty as jurors is to listen to
12 the evidence, listen to the facts.

13 Hold the state to their burden of proof, because if
14 the state does not prove just one of those elements in one
15 of those crimes, then your obligations as a juror is that
16 you are not going to be able to find the person guilty,
17 that you must continue to state the fact as it is today
18 that Mr. Lyles is an innocent man. However difficult that
19 may be in terms of the seriousness of the allegation,
20 that's your sworn duty as a juror.

21 I'm going to ask you to do your sworn duty, seek the
22 truth in this case and at the end of the trial find the
23 defendant not guilty of those charges that the state has
24 failed to prove. Thank you.

25 THE COURT: All right. Ladies and gentlemen, as I

1 promised, we are going to recess for lunch now.

2 Before I let you go, let me caution you that under
3 your oath as jurors your decisions in this case must be
4 based solely upon the evidence received during the trial of
5 the case and the law that is applicable as I will provide
6 it at the trial's conclusion. And therefore under your
7 oath as a juror during the course of this trial and until
8 its conclusion you are not permitted to discuss this case
9 in any fashion whatsoever with any person whatsoever.

10 You are not even permitted to discuss it among
11 yourselves as jurors until you've been asked to begin your
12 deliberations. And that of course won't be until the end
13 of the trial after all of the evidence has been received
14 and I have instructed you on the law that is applicable.

15 So from this point forward until you've been asked to
16 begin deliberations you are to have no discussions about
17 the case with any person whatsoever in any fashion
18 whatsoever.

19 Also, under your oath as a juror you are not permitted
20 to allow yourselves to be influenced by any outside or
21 extraneous circumstance or information. And therefore you
22 are not permitted to allow anyone to discuss the case with
23 you or try to discuss the case with you.

24 You're also not permitted to allow yourselves to be
25 exposed to any type of media coverage that might relate to

1 the case, whether it be television or radio or newspapers.

2 If something should come on the television, turn it
3 off. If something comes over the radio, turn it off. Just
4 don't look at the newspaper in the event there's some
5 article about the case, because you can't be influenced by
6 any outside consideration.

7 As I say, somebody might have an opinion. Somebody
8 may make a statement. It may be true; it may be false; but
9 it might have an influence upon you and your decision.

10 That's why you have to avoid any outside or extraneous
11 information and base your verdict solely upon what you see
12 and hear during the trial of the case.

13 And it's also important and required under your oath
14 as jurors that you not conduct any research or do your own
15 investigation into any issue or anything that relates to
16 the case or the persons involved in the case. You are not
17 permitted to conduct any research or do any investigation
18 into anything that relates to this case.

19 So with those cautions in mind, I do want you to have
20 a good lunch. I'll ask that you please report to your jury
21 room at 2:15, at 2:15 this afternoon. That is the room
22 that you've been introduced to since your selection as
23 jurors.

24 If you're not sure how to get back to that jury room,
25 ~~discuss it with the bailiff before you leave, and they'll~~

Tanesha Ballenger
Direct examination by Mr. Gowdy

1 provide you with those instructions.

2 So do have a good lunch. And please report to your
3 jury room at 2:15 this afternoon.

4 (The following takes place outside the presence of the
5 jury.)

6 THE COURT: Court is in recess until 2:15.

7 (Whereupon, a recess was taken.)

8 MR. GOWDY: Your Honor, there is a surveillance of the
9 first witness.

10 (Pause.)

11 THE COURT: All right. Bring the jury in, please.

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good afternoon, ladies and gentlemen.

15 As you know, when we recessed we had -- the opening
16 statements had just been concluded. So we're now going to
17 proceed with the evidence to be offered by the state in
18 their case in chief.

19 Solicitor.

20 MR. GOWDY: May it please the Court, Your Honor. The
21 state would call Ms. Tanesha Ballenger.

22 TANESHA BALLENGER, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. GOWDY

25 Q Good afternoon, ma'am.

Tanesha Ballenger
Direct examination by Mr. Gowdy

1 A Good afternoon.

2 Q I need for you to speak in a good strong, clear voice
3 where the last two gentlemen in the jury box can hear you.

4 Okay?

5 A Okay.

6 Q Introduce yourself to the jury and tell them where you
7 live.

8 A My name is Tanesha Ballenger, and I'm from, I live at
9 Road, Lyman, South Carolina.

10 Q You live in Lyman.

11 A Yes, sir.

12 Q Ms. Ballenger, I want you to go back to March the
13 7th of 2009 with me, okay, about lunchtime. Where were
14 you?

15 A I was at the car wash washing my car.

16 Q All right. Describe the kind of car wash. Is it a
17 do-it-yourself one?

18 A Yes, sir.

19 Q Was anybody with you?

20 A I had my daughter with me, my three-year-old daughter
21 with me.

22 Q Okay. Do you know how many bays there are at this car
23 wash?

24 A I think there's like five if I'm not mistaken.

25 Q If I were looking at the bays this direction, were you

Tanesha Ballenger
Direct examination by Mr. Gowdy

1 closer to this end or closer to that end?

2 A Well, at first I was on the front end, and then I
3 moved my car.

4 Q Why did you move your car?

5 A I just felt uncomfortable. I had seen somebody
6 walking around. So I just moved to the back one, the back
7 bay, all the way in the back.

8 Q You saw somebody walking around.

9 A Yeah, just lurking.

10 Q Describe to the ladies and gentlemen of the jury what,
11 who. Describe the man or woman that you saw walking
12 around.

13 A It was a little tall black guy wearing a dark hoody,
14 looked like he had on a stocking cap, wearing like brown
15 looking Timberline like shoes.

16 Q Was he washing a car?

17 A No, sir. He was just walking. He came up walking
18 from the far end like coming from the Clock. He came
19 walking up that way and just started walking through the
20 car wash, just lurking, looking at everybody, walking up
21 behind people when they was at the change machine and
22 different things.

23 Q Did you interact with him verbally? Did he say
24 anything to you or --

25 A No, sir.

Tanesha Ballenger
Direct examination by Mr. Gowdy

1 Q But you just had an uneasy feeling.

2 A Yes.

3 Q All right. Enough that you moved your car.

4 A Yes, sir.

5 Q All right. Now, tell the jury what happened after
6 that.

7 A After that I was washing my car, and I heard a lady
8 screaming somebody -- well, I heard her -- a man walk up
9 and ask her, you know, on the other side. I heard them
10 talking or whatever. And it was the man that I had seen
11 lurking around. So she was talking to him. And I seen him
12 start helping her wash her car. And it wasn't like three
13 or four seconds later she was screaming saying he didn't --

14 MS. HODGES: Objection to hearsay, Your Honor.

15 THE COURT: Overruled.

16 A Screaming. She was screaming somebody done drove off
17 in my car, somebody stole my car.

18 So, and then I'm like, you know, I seen the car go up
19 and pull out to the right -- her truck. It was the
20 burgundy Toyota truck -- pull out to the right. And she
21 was like my mama, my mama. So we ran around looking for
22 her mama. And we found her mama on the other side of the
23 car wash. She just so happened had got out of the car. So
24 we found her mama on the other side.

25 Q Do you see the lady in the courtroom that you met that

Tanesha Ballenger
Cross-examination by Ms. Hodges

1 day that had her truck stolen?

2 A Yes, sir.

3 Q Would you point her out?

4 (Whereupon, the witness pointed to the victim.)

5 Q The lady with the blue outfit on?

6 A Yes, sir.

7 Q And she was with her mama?

8 A Yes, sir.

9 Q And she was screaming that somebody had just stolen
10 her truck.

11 A Yes. She was screaming, yes, sir.

12 Q All right. Other than this tall male that you had
13 seen lurking about, did you see anybody else lurking about,
14 or was it just him?

15 A Just him. No one else.

16 Q Thank you, Ms. Ballenger. Please answer any questions
17 the defense attorney may have for you.

18 CROSS-EXAMINATION

19 BY MS. HODGES

20 Q Ms. Ballenger, you had indicated that at first the
21 lady that was screaming about her truck, that she was
22 worried about her mama, is that right?

23 A Yeah, after.

24 Q Thinking that her mother was in the truck?

25 A Yes.

Tanesha Ballenger
Cross-examination by Ms. Hodges

1 Q Turned out that wasn't true. The mother was not in
2 the truck, correct?

3 A Yes.

4 Q Okay. So the only person that drove off in the truck
5 was the man.

6 A Yes, sir.

7 Q Okay. And you also indicated -- do you remember
8 giving a written statement to the police officers about
9 what you, what you saw that day?

10 A Yes, ma'am.

11 Q Okay. Did you give that to them the same day or a
12 couple of days later if you remember?

13 A It was like a day, yeah, like a day later.

14 Q Okay. So if your written statement says that it was
15 given on March the 10th, would that be, sound about right,
16 about three days later?

17 A Yes, ma'am. I'm sure of that.

18 Q And do you remember describing that to the officers
19 that day, that he was wearing a black stocking cap and a
20 black jacket and tan work boots?

21 A Yes, sir, yes, ma'am. I'm sorry.

22 Q That's all right. And today you were talking that he
23 had on kind of a dark hoody. Are you talking, when you say
24 a dark hoody, is that also what you mean by the jacket or
25 did he have like --

Tanesha Ballenger
Cross-examination by Ms. Hodges

- 1 A It's the jacket. It's one.
- 2 Q Okay, okay. So it was a dark-colored jacket. Do you
- 3 remember what color?
- 4 A Black.
- 5 Q Black?
- 6 A Yeah.
- 7 Q Okay. And do you remember at this point -- I know
- 8 it's been several months, but do you remember at this point
- 9 was it actually like a hooded sweatshirt or a jacket or --
- 10 A It was a hoody sweatshirt.
- 11 Q Okay. And did the police officers ever ask you to
- 12 identify that, the man that you saw that day, any further?
- 13 A No, ma'am.
- 14 Q Okay. So they didn't ask you any other questions
- 15 other than just to describe what you saw in your written
- 16 statement.
- 17 A Yes, ma'am.
- 18 Q Okay. And you said that there also -- when you first
- 19 saw him walk up, that he was talking to a black male that
- 20 was driving a gold Caravan. Do you remember that?
- 21 A Yes, ma'am.
- 22 Q Where was that gold Caravan?
- 23 A I think it was in the front car wash up.
- 24 Q Okay.
- 25 A Well, when you first pull in in the front pull-in.

Tanesha Ballenger
Cross-examination by Ms. Hodges

1 Q Okay. And did that person stay there the whole time
2 that this happened?

3 A No, no, ma'am.

4 Q How long would you say that you were there when you
5 first noticed the man walk, because you say he was walking
6 up from the Clock. Does that mean the Clock restaurant?

7 A He was walking, you know, just walking, yeah.

8 Q Right. But when you say Clock, are you talking about
9 the Clock restaurant?

10 A Yes, ma'am.

11 Q All right. So you see this person come in from the
12 direction of the Clock restaurant. How long from basically
13 that time you first notice him to the time that the truck
14 is being taken?

15 A I noticed him for a good 20 minutes.

16 Q Twenty minutes?

17 A Yeah, 20 minutes.

18 Q Okay.

19 MS. HODGES: Beg the Court's indulgence.

20 (Pause.)

21 Q Thank you, ma'am.

22 MR. GOWDY: Nothing on redirect, Your Honor.

23 THE COURT: You may step down.

24 MR. BARNETTE: Your Honor, I would like to call Gene
25 Thompson to the stand, please.

Edwin Eugene Thompson
Direct examination by Mr. Barnette

- 1 EDWIN EUGENE THOMPSON, having
2 been first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. BARNETTE
4 Q If you would, sir, please state your full name for the
5 record, please.
6 A My full name is Edwin Eugene Thompson.
7 Q I'm going to have to ask you to speak up so this man
8 can hear you all the way back here. Okay?
9 A Okay. Edwin Eugene Thompson.
10 Q And where do you work at, sir?
11 A I work at Thompson's Wrecker Service and Lyman Car
12 Wash.
13 Q Okay. Do you manage the car wash yourself?
14 A Yes, sir.
15 Q And do you work there also at the wrecker service?
16 A Yes, sir.
17 Q And do y'all have a video camera system that covers
18 the wrecker service and the car wash?
19 A Yes, sir.
20 Q Back on March 7th of this year was you called to take
21 a video from y'all's video system?
22 A Yes, sir.
23 Q And let me show you what's been marked as State's
24 Exhibit 61. If you would, take a look inside. Did you
25 download the video down to a flash drive?

Edwin Eugene Thompson
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And did you review that video before you downloaded it
3 to a flash drive that day?

4 A I downloaded it onto the SanDisk flash drive.

5 Q Yes, sir. And did you review the video tape to see if
6 it --

7 A I did not review it off this.

8 Q No. Did you review it off your system?

9 A Off the system, yes, sir.

10 Q And you downloaded that video down to that disc.

11 A Straight to this, yes, sir.

12 Q And also that's been copied onto a C. D. also. Is
13 that from that disc from your understanding?

14 A Yes, sir.

15 MR. BARNETTE: Your Honor, I'd like enter State's
16 Exhibit No. 1 and 61 into evidence at this time.

17 MS. HODGES: We have no objection, Your Honor.

18 THE COURT: They're admitted.

19 (Video from the Lyman Car Wash marked State's Exhibit
20 No. 1; flash drive video of State's Exhibit No. 1 marked
21 State's Exhibit No. 61.)

22 Q And this would show what happened that day, is that
23 correct?

24 A Yes, sir.

25 Q If you would, please, answer any questions Ms. Hodges

Edwin Eugene Thompson
Cross-examination by Ms. Hodges

1 may have for you.

2 CROSS-EXAMINATION

3 BY MS. HODGES

4 Q Mr. Thompson, do you know how long the video footage
5 is that you downloaded?

6 A I do not. I don't recall exactly how long it is.

7 Q Okay. And have you had an opportunity to review it
8 today or since you downloaded it?

9 A No, ma'am, not today.

10 Q But have you had an opportunity to review it since you
11 downloaded it?

12 A I watched it on my computer system at the shop.

13 Q The day you downloaded it.

14 A Yes, ma'am.

15 Q But have you reviewed it since then?

16 A No, ma'am.

17 Q Thank you, sir.

18 MS. HODGES: I have nothing further, Your Honor.

19 MR. BARNETTE: No further questions, Your Honor.

20 THE COURT: You may step down.

21 MR. GOWDY: May it please the Court, Your Honor. The
22 state would call Ms. Karen Mathis.

23

24

25

Karen Mathis
Direct examination by Mr. Gowdy

1 KAREN MATHIS, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. GOWDY

4 Q Good afternoon, ma'am. I'm going to get you to
5 introduce yourself to the jury and tell them who you are.
6 And speak in as good and strong and loud of voice as you
7 can. Okay?

8 A Okay. I'm Karen Mathis.

9 Q I know you, I know you might be just a little bit
10 nervous, but I need for the jury to be able to hear you,
11 and also the young lady behind you. Okay. So even if you
12 think you're screaming at me, that's okay. Just speak as
13 strong and clear as you can.

14 Okay. Tell the jury your name.

15 A Karen Mathis.

16 Q Ms. Mathis, where do you live?

17 A At Street, Wellford, South Carolina.

18 Q Does anybody live there with you, Ms. Mathis?

19 A My mother.

20 Q Your mama's name is Ms. Rose?

21 A Ruby.

22 Q Ruby, Ruby. I'm sorry. And how old is your mama?

23 A Eighty-three.

24 Q Okay. I want to go back with you to March the 7th of
25 this year. Okay?

Karen Mathis
Direct examination by Mr. Gowdy

- 1 A Yes, sir.
- 2 Q Around lunchtime. Tell the jury what you were doing
- 3 around lunchtime on March the 7th.
- 4 A I was washing my truck at Lyman Car Wash.
- 5 Q What kind of truck do you have, Ms. Mathis?
- 6 A A 1998 Tacoma Toyota.
- 7 Q What color is it?
- 8 A Burgundy.
- 9 Q And you were -- what kind of car wash is the Lyman Car
- 10 Wash? Is it a do-it-yourself place?
- 11 A Yes, sir, it is.
- 12 Q And you went there with whom? Who else was with you?
- 13 A My mother.
- 14 Q So you and your mama have gone to the car wash to wash
- 15 your burgundy Toyota Tacoma.
- 16 A Yes, sir.
- 17 Q All right. While you were there did anyone come up to
- 18 you and start talking to you or making idle conversation
- 19 with you?
- 20 A Yes, sir.
- 21 Q Tell the jury about that.
- 22 A Mr. Lyles come up and asked me could he help me wash
- 23 my truck.
- 24 Q Did you need any help, Ms. Mathis?
- 25 A No, sir.

Karen Mathis
Direct examination by Mr. Gowdy

- 1 Q Did you ask him for his help?
- 2 A No, sir.
- 3 Q How many times did he come into the bay where you were
- 4 washing your truck?
- 5 A About three.
- 6 Q Would he also walk off and go to other bays?
- 7 A Yes, sir.
- 8 Q From the time you first saw Mr. Lyles at the car wash
- 9 until the time your truck got gone, how long, how much time
- 10 had passed?
- 11 A Probably about 20 minutes.
- 12 Q About 20 minutes. Were you paying any attention to
- 13 what he was doing when he wasn't standing there talking to
- 14 you?
- 15 A No, sir.
- 16 Q So you don't know where he went then.
- 17 A No, sir, I don't.
- 18 Q I want you to tell the jury about the last time he
- 19 came to the bay where you were washing your burgundy Toyota
- 20 Tacoma. What happened the last time he came?
- 21 A The last time he came he asked me could he help me
- 22 wash the truck. And I was at the back of the truck. And
- 23 then he went to the front of the truck and jumped in the
- 24 truck and drove off.
- 25 Q And what did you do, Ms. Mathis, when Mr. Lyles jumped

Karen Mathis
Direct examination by Mr. Gowdy

1 in your truck and drove off?

2 A I ran after the truck. I tried to open the door, and
3 I run after the truck.

4 Q Ms. Mathis, have you seen a video of the car wash from
5 March the 7th?

6 A Yes, sir.

7 Q Does it fairly and accurately depict what happened?

8 A Yes, sir.

9 MR. GOWDY: Your Honor, permission to display Exhibit
10 No. 61 to the jury, Your Honor.

11 THE COURT: You may.

12 Q Ms. Mathis, I want you to stand down here. I'm not
13 going to ask you any questions. But if I do, speak where
14 the court reporter can hear you. But you come and stand
15 down here with me. Okay?

16 (Whereupon, the witness left the stand.)

17 Q I want us to orient the jury real quick. What's that
18 right there?

19 A That's my truck.

20 Q Okay. And who is that?

21 A That's me.

22 Q Where is your mama?

23 A My what?

24 Q Where is your mama?

25 A She's standing at the back.

Karen Mathis
Direct examination by Mr. Gowdy

- 1 Q She's at the back. Who is that?
- 2 A That's Mr. Lyles.
- 3 Q Okay.
- 4 (Whereupon, the C. D. was played for the jury.)
- 5 Q That's you still over there washing your truck?
- 6 A Yes, sir.
- 7 Q We may fast forward it a little bit just to...
- 8 (Whereupon, the C. D. was played for the jury.)
- 9 Q What's happening now, Ms. Mathis? He's walked back
- 10 into the bay, right?
- 11 A Yes, sir.
- 12 (Whereupon, the C. D. was played for the jury.)
- 13 Q Is he talking to you at this point?
- 14 A Yes.
- 15 Q Speak up where the court reporter can hear you.
- 16 A Yes, sir. He's asking me if he could help me wash the
- 17 truck.
- 18 (Whereupon, the C. D. was played for the jury.)
- 19 Q He's in the bay with you, right?
- 20 A Yes, sir.
- 21 Q That's you around back of the truck.
- 22 A Yes, sir.
- 23 Q Who is that that just got in your truck, Ms. Mathis?
- 24 A Mr. Lyles.
- 25 Q Who is that right there?

Karen Mathis
Direct examination by Mr. Gowdy

1 A That's me running, trying to run.

2 Q All right. Ms. Mathis, I'm going to get you to take
3 your seat again. Okay? And I'm going to ask if somebody
4 will convert that back over. Have a seat up here. I'm
5 sorry.

6 (Whereupon, the witness returned to the stand.)

7 Q After you went running after your truck, what did you
8 do, Ms. Mathis?

9 A I was, I was screaming, and I didn't have my phone or
10 anything to call the policeman. And that's when
11 Ms. Ballenger come to see what the problem was.

12 Q Ms. Ballenger being the young lady that the jury just
13 heard from?

14 A Yes, sir.

15 Q I want to show you what's been marked for
16 identification purposes as State's 29, 30, 36 and 50 and
17 just ask you if you recognize what is depicted in these
18 pictures. Don't describe them for me yet. Just tell me if
19 you recognize them. Okay?

20 (Pause.)

21 A Yes, sir.

22 Q Do you recognize them?

23 A Yes, sir, yes.

24 Q Thank you.

25 MR. GOWDY: Your Honor, we would move 29, 30, 36 and

Karen Mathis
Direct examination by Mr. Gowdy

1 50 into evidence at this point.

2 MS. HODGES: We have no objection.

3 THE COURT: No objection?

4 MS. HODGES: No, sir.

5 THE COURT: There are four -- 29, 30, 36 and 50?

6 MR. GOWDY: Correct.

7 THE COURT: Each a photograph?

8 MR. GOWDY: Yes, sir.

9 THE COURT: They are admitted.

10 (Photographs marked State's Exhibits Nos. 29, 30, 36
11 and 50.)

12 MR. GOWDY: Permission to publish, Your Honor?

13 THE COURT: You may.

14 Q I want to first show you, Ms. Mathis, State's No. 36.
15 What's the jury looking at?

16 A My truck.

17 Q That's your burgundy Toyota Tacoma pickup truck. And
18 you recognize it because of the license tag. And that's
19 the tool box on the back. Is that what I'm looking at?

20 A Yes, sir.

21 Q Okay. Now I want to show you State's Exhibit 50.
22 What's the jury looking at?

23 A That's inside my truck.

24 Q That's the inside of your truck. Was that picture
25 taken after your truck had been taken, or is that the way

Karen Mathis
Direct examination by Mr. Gowdy

1 you kept the inside of your truck?

2 A That was after it was taken.

3 Q After the police got it back for you?

4 A Yes, sir.

5 Q All right. Now, I want to show you State's No. 30.

6 You just told this jury that you weren't able to call the
7 police. Because of why?

8 A My cell phone was in the truck.

9 Q All right. And what's the jury looking at in that
10 picture?

11 A My cell phone and my --

12 Q That picture was taken by the police when your truck
13 was recovered, right?

14 A Yes, sir.

15 MS. HODGES: Objection to leading.

16 MR. GOWDY: I'll rephrase it, Your Honor.

17 Q Ms. Mathis, did you have your cell phone after the
18 defendant took your truck?

19 A No, sir.

20 Q All right. Did you have it after the police brought
21 it back to you?

22 A No, sir.

23 Q Did you get your cell phone back after your truck was
24 recovered?

25 A No, sir.

Karen Mathis
Direct examination by Mr. Gowdy

- 1 Q I think it may be State's 55. Does that look
2 familiar?
- 3 A That's my cell phone.
- 4 Q Okay. And it's in the picture right there?
- 5 A Yes, sir.
- 6 Q All right. And what's beside your cell phone?
- 7 A My wallet.
- 8 Q Your wallet. All right. And was it also in your
9 truck when it was taken?
- 10 A Yes, sir.
- 11 Q Okay. Ms. Mathis, this happened about lunchtime on
12 the 7th.
- 13 A Yes, sir.
- 14 Q And somebody called law enforcement, right?
- 15 A Yes, sir. Ms. Ballenger did.
- 16 Q Ms. Ballenger did. Did you talk to law enforcement
17 that day?
- 18 A Yes, I did.
- 19 Q I want you to give the jury a sense of what your
20 emotional state would have been like after this had
21 happened.
- 22 A Bad. My emotional, I mean, I was real emotional.
- 23 Q Did you --
- 24 A Because at that time I couldn't think of my tag number
25 or anything.

Karen Mathis
Direct examination by Mr. Gowdy

1 Q You were rattled, is that fair to say?

2 A Yes, sir.

3 Q Scared, is that fair to say?

4 A Yes, sir.

5 Q Nervous?

6 A Yes, sir.

7 Q When law enforcement -- did law enforcement ask you
8 whether or not you could identify the person that took your
9 truck?

10 A They did.

11 Q And what did you tell them the first time they asked
12 you?

13 A The first time I told them that I was so upset that I
14 couldn't, that I couldn't.

15 Q Did they come back to you a second time and ask you
16 after two days had passed whether or not you felt more
17 comfortable looking at a series of photographs?

18 A Yes, sir.

19 MS. HODGES: Your Honor, at this time I'm going to
20 renew our objection.

21 THE COURT: Okay. Overruled.

22 Q And, Ms. Mathis, two days later on March the 9th did
23 you feel more comfortable looking at photographs?

24 A I felt more comfortable. I was still nervous, but I
25 felt more comfortable.

Karen Mathis
Direct examination by Mr. Gowdy

1 Q Okay. I want to show you what's been marked as
2 State's Exhibit No. 59, okay, and ask you whether or not
3 you recognize that.

4 A Yes, sir.

5 Q What is that?

6 A That's the thing that the officer brought to me to see
7 if I could identify.

8 Q So a police officer brought you a series of six
9 photographs.

10 A Yes, sir.

11 Q Did the police officer tell you that the person who
12 took your truck was definitely one of those six and you
13 just had to figure out which one it was?

14 A No, sir. He did not.

15 Q Did you have the option, Ms. Mathis, of picking none
16 of the six?

17 A Yes, sir.

18 Q Is that your signature at the bottom?

19 A Yes, sir.

20 Q And did you identify one of these six as the person
21 that took your truck?

22 A Yes, sir, I did.

23 MR. GOWDY: Your Honor, we would move State's 59 into
24 evidence.

25 MS. HODGES: Your Honor, we renew our objections to

Karen Mathis
Direct examination by Mr. Gowdy

1 59.

2 THE COURT: Well, let me see y'all just a minute. Let
3 me see the picture.

4 (Bench conference held off the record in the presence
5 of the jury but out of the hearing of the jury.)

6 THE COURT: All right. Note the exception. It's
7 overruled.

8 MR. GOWDY: Permission to publish, Your Honor.

9 THE COURT: You may.

10 (Lineup marked State's Exhibit No. 59.)

11 Q Ms. Mathis, I'm going to show you State's Exhibit 59.
12 Okay. I'm going to start by asking you is that your
13 signature at the bottom.

14 A Yes, sir.

15 Q All right. You signed it.

16 A Yes, sir.

17 Q And a Lyman city police officer brought this lineup to
18 you.

19 A Yes, sir.

20 Q And I think you testified previously that you were
21 free to pick none of the above, right?

22 A Yes, sir.

23 Q Did you see in this lineup the person who stole your
24 truck?

25 A Yes, sir.

Karen Mathis
Direct examination by Mr. Gowdy

1 Q And who did you pick? How did you evidence or note
2 who you picked?

3 A How did I know?

4 Q With your initials. Are those your initials?

5 A Yes, sir.

6 Q So you wrote. Those are your initials above that
7 picture.

8 A Yes, sir.

9 Q I'm going to ask you, Ms. Mathis. Is the person in
10 that photograph the person that stole your truck on
11 March the 7th of 2009?

12 A Yes, sir.

13 Q Ms. Mathis, I want to ask you one more question. Do
14 you see the person who stole your truck on March the 7th of
15 2009 in this courtroom?

16 A Yes, sir.

17 Q I want you to point him out, Ms. Mathis. Sitting with
18 the white shirt on?

19 A Yes, sir.

20 Q No jacket?

21 A Yes, sir.

22 MR. GOWDY: Your Honor, may the record reflect Ms.
23 Mathis has identified the defendant?

24 THE COURT: It shall.

25 Q Ms. Mathis, please answer any questions the defense

Karen Mathis
Direct examination by Mr. Gowdy

1 attorney may have for you.

2 MR. GOWDY: Your Honor, if I may have one second.

3 (Pause.)

4 MR. GOWDY: Your Honor, just a couple of more
5 questions if I may.

6 BY MR. GOWDY

7 Q Ms. Mathis, at some point, without going into the
8 details of the call, did you receive a phone call that some
9 of your items had been recovered, some of the items from
10 your purse?

11 A Yes. The pictures.

12 Q All right. Don't tell me what was said, but you
13 received word. Was it from somebody in law enforcement or
14 just a citizen that had found something?

15 A Just a good citizen.

16 Q Okay. And where did you go to get your items back?

17 A On Rainbow Lake Road.

18 Q Rainbow Lake Road. Is that in Lyman or is that --

19 A That's in, kinda in, Boiling Springs.

20 Q Boiling Springs. Somebody found your items and called
21 you and told you they had them.

22 A Yes, sir.

23 Q And you went and got them.

24 MS. HODGES: Objection. Your Honor, the solicitor
25 continues to lead this witness.

Karen Mathis
Cross-examination by Ms. Hodges

1 THE COURT: Sustained.

2 MR. GOWDY: That's all I have, Your Honor.

3 CROSS-EXAMINATION

4 BY MS. HODGES

5 Q Ms. Mathis, when did you tell the police officer you
6 had received a phone call about these items that had been
7 recovered?

8 A Let's see. I don't know if I ever told the police
9 officer.

10 Q You never told the police officer that, did you?

11 A No, sir, no, ma'am.

12 Q All right. And when you first talked to the police
13 did you give them a description of the person that you saw
14 that day at the car wash?

15 A No, ma'am. I was too upset that day.

16 Q Well, you didn't tell the police officer that the man
17 you saw was wearing a red hooded shirt and a black coat and
18 blue jeans?

19 A I don't recall that.

20 Q You don't recall telling the police officer that?

21 A I might have did. I was upset.

22 Q Okay. And, I mean, I can understand. I mean, it
23 would be an upsetting event. But you don't recall with any
24 specifics what you told the police officers you saw that
25 day?

Karen Mathis
Cross-examination by Ms. Hodges

- 1 A Just that the only thing that I remember saying was I
2 remembered the hood.
- 3 Q Okay. So you do remember him having a hood on.
- 4 A Yes, ma'am.
- 5 Q Okay. And this car is actually titled in your
6 mother's name, is that right?
- 7 A Mine or my mother's yeah.
- 8 Q Well, the tax receipts are shown in your mother's
9 name, isn't that right?
- 10 A Yes.
- 11 Q Okay. So the tax notices for the car come actually to
12 the attention of your mother as the owner of the vehicle,
13 is that right? Is that a yes?
- 14 A Yes, ma'am.
- 15 Q Okay. Thank you.
- 16 You would agree with me that the video that we saw from
17 that day, you can't really see any, anything clearly in
18 terms of facial features or anything that would clearly
19 identify the person that gets into the truck, is that
20 correct?
- 21 A Yes, ma'am.
- 22 Q Okay. And, in fact, you were still upset on the next
23 day to be able to look at the photo lineup. You were too
24 upset to be able to identify anybody that day, is that
25 correct?

Karen Mathis
Cross-examination by Ms. Hodges

1 A Yes, ma'am.

2 Q Okay. And so it wasn't until basically the second day
3 afterwards the police officer comes and shows you the photo
4 lineup. And you already had been given some information
5 about the case prior to that, isn't that correct?

6 A Yes, ma'am.

7 Q Okay. And when you say in your testimony today, you
8 refer to the person as Mr. Lyles, you did not know him that
9 day.

10 A No, ma'am.

11 Q Okay. So you only basically know him, know his name,
12 as a result of basically the investigation and what you've
13 been told in the case subsequent to the incident happening,
14 right?

15 A Yes, ma'am.

16 Q Okay. Thank you, ma'am.

17 MS. HODGES: That's all I have..

18 MR. GOWDY: Nothing on redirect, Your Honor.

19 THE COURT: You may step down.

20 MR. BARNETTE: Your Honor, we would call Susan Bagwell
21 to the stand, please.

22 MS. HODGES: May we approach the bench?

23 THE COURT: You may.

24 (Bench conference held off the record in the presence
25 of the jury but out of the hearing of the jury.)

Susan Denise Bagwell
Direct examination by Mr. Barnette

1 SUSAN DENISE BAGWELL, having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BARNETTE

4 Q Ma'am, if you would, give your full name for the
5 record, please.

6 A Susan Denise Bagwell.

7 Q Where do you work at, ma'am?

8 A Spartanburg County Auditor's Office.

9 Q And what's your position there, ma'am?

10 A Administrative assistant.

11 Q And is part of duties maintaining the records there,
12 ma'am?

13 A Yes, it is.

14 Q Let me show what's been marked as State's Exhibit 56.
15 Is this the record that's maintained by y'all's office?

16 A Yes, it is.

17 Q And is that a record on Karen Mathis' 1998 Toyota
18 truck?

19 A It is.

20 MR. BARNETTE: And, Your Honor, at this time I'd like
21 to enter this into evidence.

22 MS. HODGES: Your Honor, we have no objection to
23 State's 56.

24 THE COURT: It is admitted.

25 (Tax record marked State's Exhibit No. 56.)

Susan Denise Bagwell
Cross-examination by Ms. Hodges

1 MR. BARNETTE: Your Honor, may I publish it to the
2 jury at this time?

3 THE COURT: You may.

4 Q Looking at this, ma'am, what is the value of that
5 automobile?

6 A \$5,500.

7 Q And that's what's at y'all's records, and that's the
8 value of it.

9 A Correct.

10 Q Thank you, ma'am. If you would, answer any questions
11 the defense may have for you.

12 CROSS-EXAMINATION

13 BY MS. HODGES

14 Q Let me go ahead and leave this up for just a minute.
15 The value of \$5,500, how is that derived?

16 A We get those values from the state from the department
17 of revenue, and that's how we assess them.

18 Q So basically there's a list of values for --

19 A We get those calculations from the state, and that's
20 entered into our system.

21 Q Okay. So they will say that a 1998 Toyota Tacoma
22 with -- do they give you a range in terms of numbers of
23 miles or in terms of --

24 A No. It's the assessment that they have on it. And
25 then we take that and do it by 6 percent to get the taxable

Susan Denise Bagwell
Cross-examination by Ms. Hodges

1 figure.

2 Q Okay. So that value, 6 percent is the --

3 A It's based on the \$5,500.

4 Q So 6 percent of \$5,500 would give the actual value of
5 the tax.

6 A Right.

7 Q Okay. And, in fact, the tax receipt actually says
8 that the owner is Ruby Mathis, is that correct?

9 A The primary registrant is the first person on there.
10 It is registered to Ruby Mathis, but also to Karen Elaine
11 Mathis.

12 Q Okay. And do you have that?

13 A I do.

14 Q If I could just look at what you're looking at.

15 (Pause.)

16 Q Okay. Thank you, ma'am.

17 A Uh-huh.

18 Q Do you know what the department of revenue, how they
19 get to the value of \$5,500? Or y'all just receive that
20 list from them?

21 A It is from the vehicle value guides specified to the
22 Southeast.

23 Q Kind of like Kelly Blue Book or something like that?

24 A Right, right.

25 Q Thank you, ma'am.

Amy Sandifer
Direct examination by Mr. Gowdy

1 MR. BARNETTE: Your Honor, I just ask to enter that
2 other exhibit in, I mean, other document as an exhibit if
3 they don't have any objection to it.

4 MS. HODGES: I have no objection, or a copy if that's
5 the original if she needs that.

6 MR. BARNETTE: Make it State's Exhibit 62, Your Honor.
7 Kathy, any objection to that?

8 THE COURT: Let her see whatever it is..

9 MS. HODGES: Your Honor, I have no objection to the
10 document as amended.

11 MR. BARNETTE: Your Honor, we would ask for the
12 witness to be excused.

13 THE COURT: She may be.

14 (Tax notice marked State's Exhibit No. 62.)

15 MR. GOWDY: Your Honor, may it please the Court. The
16 state would call Ms. Amy Sandifer.

17 AMY SANDIFER, having been
18 first duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. GOWDY

20 Q Good afternoon, ma'am. I want to get you to introduce
21 yourself to the jury. Tell them your name and tell them
22 where you live. And speak in a good strong voice for me.
23 Okay.

24 A My name is Amy Sandifer, and I live at
25 Road, Campobello.

Amy Sandifer
Direct examination by Mr. Gowdy

1 Q How long have you lived in Campobello, Ms. Sandifer?

2 A About ten years.

3 Q And who do you live with there?

4 A My husband and three boys, two of which are in
5 college.

6 Q Do you work outside the home?

7 A I do. I'm a home health nurse.

8 Q Home health nurse. I want to go back to March the
9 7th of this year with you. Okay. Do you know whether or
10 not you worked that day? Do you recall working that day?

11 A I did not work that day.

12 Q All right. You did not work on March the 7th. Do you
13 have a routine or a habit? Do you try to take a nightly
14 walk?

15 A I do. I have about a 3-mile route marked out that I
16 usually do every evening.

17 Q Tell the jury how you start that route and where that
18 route takes you.

19 A Well, I live on a dead end. And I usually drive my
20 car to the top of the road so that my dogs don't follow me.
21 I park my car. And then it's about a mile and a half one
22 way. And then I just head back the other.

23 Q Is there a sidewalk, or do you just walk along the
24 roadside?

25 A Well, there's no sidewalk. It's just along the road.

Amy Sandifer
Direct examination by Mr. Gowdy

1 It's usually not a very well-traveled part of Rainbow Lake
2 Road.

3 Q Now, on March the 7th when would you have begun your
4 walk? What time?

5 A It was right around 6:00.

6 Q And would the sun still be up on March the 7th around
7 6:00 o'clock?

8 A Yes.

9 Q Was it still daylight?

10 A It was still full light.

11 Q And on this day did you drive your car to the top of
12 the hill like you normally do?

13 A I did.

14 Q And what do you take with you, if anything, when you
15 go walk?

16 A I just had my iPod with my over-the-ear headset.

17 Q Okay. Tell the jury what happened on March the
18 7th during your walk.

19 A I had begun my walk, and I wasn't very far into the
20 walk. And I recall a burgundy pickup truck passing going
21 the opposite direction that I was walking. And I didn't
22 really pay a whole lot of attention to it. And a few
23 minutes later I recall the truck coming up going the same
24 direction that I'm going and stopped beside me. And the
25 driver asked for two roads that just, they just, don't

Amy Sandifer
Direct examination by Mr. Gowdy

1 exist in the area that I live in. And I told him, you
2 know, the first road. And then he asked a little bit
3 different road. And I said again that I don't know those
4 roads.

5 Q Let me stop you right there, Ms. Sandifer. Were you
6 by yourself?

7 A I was by myself.

8 Q Was the driver of this pickup truck by himself?

9 A Yes.

10 Q Did he pull off the road or was he still in the road?

11 A Still in the road.

12 Q Did he have to talk across the seat to talk to you or
13 did he pull up where you were just that close to the
14 window?

15 A Well, I was on the left shoulder of the road and he
16 was in the far lane from me. But the driver's side was
17 facing me.

18 Q Okay. And the driver of this Toyota pickup truck
19 asked you for directions to two roads.

20 A Yes.

21 Q Neither of which were in that area?

22 A Not that I was familiar with.

23 Q All right. Tell the jury what happened after that,
24 Ms. Sandifer.

25 A I had an uneasy feeling and started heading back

Amy Sandifer
Direct examination by Mr. Gowdy

1 toward my car. And he threw the car, the truck, in park,
2 opened the door and came out with a full 40-ounce bottle of
3 beer holding it like a club and coming at me and said,
4 "Give me all your shit, Bitch."

5 Q Is that a direct verbatim quote of what he said to
6 you?

7 A As I remember it.

8 Q All right. Give the jury as best you can the
9 dimensions of the bottle that was in his hand.

10 A Well, I'm not a beer drinker, so I'm not that
11 familiar, but the bottle was about that big and had, you
12 know, a top to it that was small about like that. Now,
13 there was no beer in the top of that.

14 Q It's in his hand. How's he holding it?

15 A When he first came out he was holding it by the fatter
16 part. And then he turned it and held it like a club. It
17 was capped, and he was holding it like a club.

18 Q And he said, "Give me all your shit, Bitch."

19 A Yes.

20 Q Had you ever seen this man before in your life?

21 A Never.

22 Q All right. After he says that to you, what happens?

23 A Well, I initially said, no, I'm not giving you my
24 stuff. And he came at me and with his hand hit me in the
25 nose real hard. And I fell across the ditch onto my butt.

Amy Sandifer
Direct examination by Mr. Gowdy

1 And he was coming after me. And, you know, it all
2 happened so fast, and I don't recall the sequence of
3 everything, but there was, I was, I do know that I was hit
4 twice with the beer bottle. I know I was hit here and I
5 was hit in the side of the head.

6 And then he grabbed the back of my t-shirt and pulled
7 me into the woods probably ten or 15 feet, I don't know,
8 and was squatted down beside of me kind of straddling me,
9 grabbing my finger, trying to pull my rings off.

10 Q So when he says give me all of your stuff, what did
11 you have with you?

12 A I just had my iPod with my headset and my rings.

13 Q Was he trying to remove your rings?

14 A He was trying to pull my rings off my finger.

15 Q Tell the jury what happened next.

16 A Well, I mean, I was not willing to give it to him. I
17 kept my, my hand closed the best I could. And I heard a
18 car coming down the road opposite the way that I would have
19 been walking. And he stopped.

20 And I guess I saw that I could get up at that point
21 and went running and screaming and waving my arms to the
22 road to stop the car. And I was hollering help me, please,
23 stop, help me. I don't remember everything that I said,
24 but I know that was the gist of it.

25 Q Did the defendant interact or talk to the occupants of

Amy Sandifer
Direct examination by Mr. Gowdy

1 the car that stopped?

2 A Yes. When, when the car did stop, and he walked up to
3 my left and said we're fine, everything's cool.

4 Q This is what he said to the folks that were in the car
5 that stopped.

6 A Yes.

7 Q How did he drag you? What did he use to drag you
8 with?

9 A He grabbed the back of my t-shirt and was pulling me
10 and strangling me.

11 Q All right. Did that car eventually pull off?

12 A It did.

13 Q What happened after that?

14 A Well, again, he was, he was grabbing me and trying to
15 pull my rings.

16 There was, there was a lot of things he was saying to
17 me. I don't recall any of what it was, just, you know,
18 trying to intimidate me and get me to give up my rings.

19 And I saw a white truck come the opposite way that the
20 other car was. And I remember seeing an older man in it.
21 And it had to drive around where the burgundy truck was
22 parked in the road. And he never even looked my way. And
23 I remember thinking then that either I give up my stuff to
24 this guy or he was going to kill me.

25 Q When faced with that choice, what did you decide to

Amy Sandifer
Direct examination by Mr. Gowdy

1 do?

2 A I gave up my stuff. I gave him my rings, and then he
3 asked for my iPod, and I gave that to him.

4 Q When you gave him, when you say, your rings, describe
5 to the jury what rings you gave him.

6 A My gold wedding band and a marquise diamond engagement
7 ring.

8 Q Was there anything distinctive about your gold wedding
9 band, Ms. Sandifer?

10 A My gold wedding band had to be cut off of me when I
11 was pregnant. And where they soldered it back together
12 there's some discoloration in the band.

13 Q Do you have your rings back now?

14 A I do.

15 Q Do you have them on?

16 A I do.

17 Q Did the defendant have the beer bottle in his hand the
18 entire time there was a struggle or fight at the roadside?

19 A Yes.

20 Q Was he issuing you verbal commands to give him your
21 stuff?

22 A Yes.

23 Q I think you testified that he struck you twice with
24 the beer bottle and once with his hand.

25 A Yes.

Amy Sandifer
Direct examination by Mr. Gowdy

1 Q Did he threaten to strike you more than that?

2 A It was always up, you know, like give me your stuff or
3 I was, he was going to hit me again. I don't know that he
4 was holding it up. He was holding it out.

5 Q All right. After he takes your rings and takes your
6 iPod, what does he do?

7 A He goes to get back in the truck, and he pulls off.

8 Q Do you make an effort to get part or as much of a
9 license tag as you can?

10 A Yes. I kind of walk toward the truck at that point
11 just to get a good view of the license tag.

12 Q Had anyone at that point come to render aid to you?

13 A No.

14 Q What did you do?

15 A I was walking back to my car just trying to repeat
16 that license tag number so I wouldn't forget it. And then
17 when I was almost to my car the first car that had come by
18 did come back and tell me that they were sorry and that
19 they had 9-1-1 on the line. And I gave them the tag number
20 then.

21 Q So you communicated the tag number to a couple that
22 said they were on the phone with 9-1-1.

23 A Right.

24 Q All right. And did you head on back to your car?

25 A Yes.

Amy Sandifer
Direct examination by Mr. Gowdy

- 1 Q And did you go home?
- 2 A Drove home.
- 3 Q Did law enforcement respond to your home?
- 4 A To the home?
- 5 Q Did you meet with a law enforcement officer, Darren
- 6 Dukes, at some point?
- 7 A I did.
- 8 Q Where did you meet Deputy Dukes?
- 9 A Actually at Wilson's store, which is at the corner of
- 10 No. 9 and 11.
- 11 Q Did you eventually go to the hospital?
- 12 A I did.
- 13 Q How long did you spend at the hospital?
- 14 A Three and a half or four hours in the emergency room.
- 15 Q I want to show you some pictures, Ms. Sandifer. I'm
- 16 going to show them to you. And I want you to tell me if
- 17 you recognize them. And then we'll go over them, okay, 3,
- 18 4, 5, 6, 7, 8, 9, 10, 11 and 23. You look at those, and
- 19 I'm going to get a couple more. Do you recognize what is
- 20 depicted in those photographs?
- 21 A I do.
- 22 Q Let me also show you 12, 13, 14, 15, 16, 35, 24 and
- 23 31. Do you recognize what is depicted in those
- 24 photographs?
- 25 A I do.

Amy Sandifer
Direct examination by Mr. Gowdy

1 MR. GOWDY: Your Honor, we would move these exhibits
2 into evidence.

3 MS. HODGES: Your Honor, we have no objection to the
4 exhibits.

5 THE COURT: They are 3 through 16 inclusive.

6 MR. GOWDY: Yes, sir.

7 THE COURT: 23, 24, 31 and 35.

8 MR. GOWDY: Yes, sir.

9 THE COURT: All right. They are admitted.

10 MR. GOWDY: Thank you, Your Honor.

11 (Photographs marked State's Exhibits Nos. 3 through 16
12 and 23, 24, 31 and 35.)

13 Q Ms. Sandifer, I'm going to start by showing you
14 State's Exhibit No. 3. Is that how you were dressed while
15 you, when you went for your walk?

16 A Yes.

17 Q And was that shirt ultimately taken into evidence by
18 law enforcement?

19 A That actually is not the shirt I had on that night.
20 It had already been taken into evidence. That was just one
21 of my boys' shirts that I had grabbed.

22 Q Okay. And that picture is, was taken at which
23 hospital?

24 A At Spartanburg Regional.

25 Q And that was the night of March the 7th.

Amy Sandifer
Direct examination by Mr. Gowdy

- 1 A That's right.
- 2 Q Okay. Let me show you State's 5. What is the jury
3 looking at?
- 4 A That was the marks left from the t-shirt when he was
5 pulling me into the woods.
- 6 Q Let me show you State's 6. What is the jury looking
7 at?
- 8 A That's just a head shot afterwards. There was some
9 swelling around my nose there.
- 10 Q Can you recall which side of your head the beer bottle
11 made impact with?
- 12 A The left.
- 13 Q I want to show you State's Exhibit No. 10. That's a
14 photograph of you taken that night?
- 15 A Yes.
- 16 Q State's Exhibit 16.
- 17 A That was the bruise on my left arm. That was on
18 Monday after the Saturday evening that this happened.
- 19 Q All right. That is a bruise that was caused by what?
- 20 A By the beer bottle.
- 21 Q All right. State's 14. That picture was taken where?
- 22 A That was at the sheriff's office two days later.
- 23 Q All right. You stayed at the hospital for how long?
- 24 A It was between three and a half and four hours.
- 25 Q All right. And when you left the hospital, where did

Amy Sandifer
Direct examination by Mr. Gowdy

1 you go?

2 A To the sheriff's office.

3 Q Were you shown a series of photographs and asked
4 whether or not you recognized your assailant in those
5 photographs?

6 A I was.

7 MS. HODGES: Your Honor, we renew our objections
8 previously made to testimony regarding those photographs.

9 THE COURT: Note your objection. It's overruled.

10 Q Let me show you what's been marked an State's Exhibit
11 No. 60 and ask you if you recognize that.

12 A I do.

13 Q On the back of State's 60 is that your signature?

14 A It is.

15 Q And this lineup was shown to you on what day?

16 A That was the night of the attack.

17 Q The night of the attack. What, four hours later,
18 three hours later?

19 A It was timed for 11:00 o'clock.

20 Q 11:00 o'clock. Five hours later.

21 MR. GOWDY: Your Honor, we would move State's 60 into
22 evidence.

23 MS. HODGES: Your Honor, we renew our objections to
24 State's 60 made previously.

25 THE COURT: It is admitted over objection.

Amy Sandifer
Direct examination by Mr. Gowdy

- 1 (Lineup marked State's Exhibit No. 60.)
2 MR. GOWDY: Permission to publish, Your Honor.
3 THE COURT: You may.
4 Q On the back of State's 60 is that your name?
5 A Yes.
6 Q Amy Sandifer.
7 A Yes.
8 Q Lorin Williams was the detective that worked your
9 case, is that correct?
10 A That's correct.
11 Q That is the photographic lineup that you were shown?
12 A Yes.
13 Q Ms. Sandifer, were you told by Lorin Williams that the
14 person who assaulted you and robbed you was definitely in
15 this photo lineup?
16 A No.
17 Q Were you given the option of picking no one?
18 A Yes.
19 Q How long did it take you to identify top right as the
20 person who had just assaulted and robbed you?
21 A Oh, about two seconds.
22 Q Two seconds. Had you ever seen him before in your
23 life?
24 A No.
25 Q How long would you say from the time he pulled up in

Amy Sandifer
Direct examination by Mr. Gowdy

1 that truck and to the time he pulled away, how long did you
2 have to observe him?

3 A Probably ten minutes.

4 Q Ms. Sandifer, on a scale of one to a hundred, with a
5 hundred being the same degree of certainty that you have
6 that you are sitting in that chair in this courtroom today,
7 how certain are you that the person that you identified top
8 right is the person who assaulted you?

9 A One hundred percent.

10 Q Do you see that person in the courtroom?

11 A I do.

12 Q Would you identify him for the jury?

13 A He is right there in the white shirt.

14 Q White shirt, no jacket, sitting in between Ms. Hodges
15 and Mr. Poole?

16 A That's correct.

17 Q And on a scale of one to a hundred, Ms. Sandifer, how
18 certain are you that the defendant is the person who on
19 March the 7th robbed you and assaulted you?

20 A One hundred percent.

21 Q One hundred percent. I want to show you State's 35.
22 Do you recognize that?

23 A That's the truck he was driving.

24 Q I want to show you State's 23. Now, it is not in your
25 hands. It's in a photograph. Does that resemble your

Amy Sandifer
Direct examination by Mr. Gowdy

1 engagement ring?

2 A Yes, it does.

3 Q How about State's 24?

4 A That is my ring.

5 Q How about State's 31?

6 A That is my iPod with my headset.

7 Q I'm going to get you to keep your voice Up. Now, some
8 iPods have those tiny little things that go in your ears.

9 What was distinctive about your iPod?

10 A The over-the-ear headset.

11 Q Did you put that iPod back on? Do you -- how do you
12 know that that's your iPod?

13 A It was playing the same Stevie Wonder song it was when
14 I turned it off.

15 Q The same Stevie Wonder song as when it was taken off.
16 Were you given a wedding band and an engagement ring on the
17 evening of March the 7th of 2009 by law enforcement?

18 A I was.

19 Q Did it fit?

20 A It did.

21 Q Is there any doubt in your mind that the engagement
22 ring and the wedding band that were given to you by law
23 enforcement on March the 7th is the same wedding band and
24 is the same engagement ring that was taken off of your hand
25 on March the 7th?

Amy Sandifer
Cross-examination by Ms. Hodges

1 A No doubt.

2 Q Can you see the little soldering mark on your wedding
3 band that was given back to you by law enforcement?

4 A I can.

5 Q What's the name of the road you were walking on?

6 A Rainbow Lake.

7 Q Rainbow Lake Road. And that is in what community,
8 Ms. Sandifer?

9 A New Prospect, Campobello.

10 Q Is that in Spartanburg County?

11 A Yes.

12 Q Spartanburg County. Ms. Sandifer, please answer any
13 questions the defense attorney may have for you.

14 CROSS-EXAMINATION

15 BY MS. HODGES

16 Q Ms. Sandifer, you gave a written statement to law
17 enforcement. I'm sorry, I'm sorry. You gave a written
18 statement to law enforcement the night that this all
19 happened, is that correct?

20 A Yes.

21 Q Where were you when you gave that statement?

22 A I wrote that statement while I was in the emergency
23 room at Spartanburg Regional.

24 Q And who gave you the material to write that statement?

25 A One of the officers.

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 Q Do you remember which officer?
- 2 A I don't.
- 3 Q Was it one of the uniformed officers or one of the
- 4 detectives, or do you remember?
- 5 A I do not recall.
- 6 Q In your statement -- have you had an opportunity to
- 7 review your statement, your written statement?
- 8 A I have.
- 9 Q Recently?
- 10 A Yes.
- 11 Q Okay. Because in your written statement you make no
- 12 reference to your assailant holding the beer bottle the
- 13 entire time, do you?
- 14 A I don't remember.
- 15 Q You don't remember whether you wrote that in there?
- 16 A I -- no. I did not write that in there.
- 17 Q Okay. And in your statement you do indicate that he
- 18 basically -- well, let me ask you this first. When you
- 19 were being dragged, were you being dragged on your back, on
- 20 your rump? How were you being dragged?
- 21 A On my back, rump. I was, I was fighting against him.
- 22 Q Okay.
- 23 A So I was kind of up trying to work my way away from
- 24 him.
- 25 Q So you're already -- you said that your head was in

Amy Sandifer
Cross-examination by Ms. Hodges

1 your -- your nose, the palm of his hand, is that right?

2 A That's right.

3 Q And you had fallen back at that point, but you'd also
4 gotten up.

5 A Not at that point.

6 Q Not at that point.

7 A No.

8 Q Okay. So at the time that you're being dragged you're
9 telling us that you, basically you, hadn't gotten up yet,
10 you're basically still on the ground.

11 A That's right.

12 Q Okay. So if you fell back onto your bottom and you
13 were being dragged, was he in front of you, behind you?
14 How?

15 A He was behind me so that he could drag me.

16 Q So he was behind you, grabbed onto the back of your
17 shirt.

18 A That's right.

19 Q Dragging you. All right. And how far did you say he
20 dragged you?

21 A Probably ten to 15 meet.

22 Q Ten to 15 feet. Okay. And at that point he then is
23 also trying to get the rings off your hand.

24 A Once he stopped dragging me.

25 Q Right.

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 A He was squatted over me --
- 2 Q Okay.
- 3 A -- trying to pull my rings off my finger.
- 4 Q Trying to pull your rings off your hand. Was he using
- 5 one hand or two hands to do that?
- 6 A To get my rings off?
- 7 Q Uh-huh.
- 8 A I don't recall.
- 9 Q Okay. So he squatted over you kind of just like
- 10 straddled over you?
- 11 A Semi. I mean, I'm sitting on the ground, and he had
- 12 like one knee this way and one knee that way over me.
- 13 Q Okay. And then -- and I assume you wear your wedding
- 14 rings on your left hand. Okay. So he squatted over trying
- 15 to pull the ring off your left hand.
- 16 A That's right.
- 17 Q Okay. And he hit your nose, the palm, and hit your
- 18 face just the one time?
- 19 A He used his hand on my nose immediately. That was the
- 20 first.
- 21 Q Right. But just the one time, is that correct?
- 22 A Yes.
- 23 Q Okay. And this beer bottle, do you know what kind of
- 24 beer bottle it was? I mean, you said it was a 40-ounce.
- 25 Do you know what brand or anything like that?

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 A No.
- 2 Q Do you know anything else about the bottle?
- 3 A I think I remember writing in my statement that it had
- 4 a gold label, but I don't recall that now.
- 5 Q Okay.
- 6 A But at the time that was a detail that I noticed.
- 7 Q Do you remember whether it was clear or colored like
- 8 green, brown, anything like that?
- 9 A You talking about the bottle itself?
- 10 Q About the bottle itself.
- 11 A It was clear.
- 12 Q Clear. Okay. And you say there was a cap on it.
- 13 A Yes.
- 14 Q And you go -- this couple that comes by, that they
- 15 came by in a car at one point, drive off and then come
- 16 back, is that correct?
- 17 A They came back once I was almost to my car.
- 18 Q Right. And they've already called 9-1-1.
- 19 A Yes.
- 20 Q And you don't talk to dispatchers, do you?
- 21 A No.
- 22 Q In fact, at that point you tell them that your husband
- 23 is a police officer, isn't that right?
- 24 A That's right.
- 25 Q And you're not interested in talking to 9-1-1 about

Amy Sandifer
Cross-examination by Ms. Hodges

1 what's happened, isn't that correct?

2 A I gave them the tag number. And all I could think
3 about was getting home to my husband.

4 Q Okay. Because your husband was at home.

5 A Yes.

6 Q Okay. And so you drive. How far is it from where
7 your walking point started to your house?

8 A About a quarter of a mile.

9 Q Okay. So you drive home. And I believe you say the
10 deputy doesn't come to your house.

11 A No.

12 Q Okay. Why is that?

13 A We get in the car and start riding around thinking
14 that we could find him.

15 Q So you and your husband are in your personal vehicle
16 driving around looking for him?

17 A I don't even remember what we were in.

18 Q Okay. Did your husband have a take-home car?

19 A Uh-huh.

20 Q And you don't remember whether you were in your
21 personal vehicle or his patrol car.

22 A I do not.

23 Q All right. But you're driving around looking for this
24 burgundy Toyota with the license tag that you think you
25 remember correctly.

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 A No. I know I remembered that.
- 2 Q You know you remembered the license plate correctly?
- 3 A Yes. I, I was off one number, but everything else,
- 4 yes, I remember distinctly.
- 5 Q Okay. So you're only off one number? Are you sure?
- 6 A was what I gave them.
- 7 Q Okay. But they're not able to find the vehicle
- 8 immediately by the license tag, are they, the police? Do
- 9 you know?
- 10 A At that point I don't know what's going on.
- 11 Q Okay. And you and your husband. Was there anybody
- 12 else that's with you driving around looking for this truck?
- 13 A No.
- 14 Q Okay. How long do you spend driving around looking
- 15 for the truck before you go to the hospital?
- 16 A We did not just drive around looking for the truck.
- 17 We, we made a circle and met with Darren Dukes, because my
- 18 husband called 9-1-1 to report it also, because I don't
- 19 think I even remembered to tell him that the other couple
- 20 had called 9-1-1.
- 21 Q Okay. So your husband has also called 9-1-1 to report
- 22 this.
- 23 A Yes.
- 24 Q All right. And did he call 9-1-1 or did he call it in
- 25 through, through dispatch?

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 A He called 9-1-1.
- 2 Q Okay. And so are you told at that point to go to the
- 3 store to meet with Detective Dukes?
- 4 A Yes.
- 5 Q Okay. How long did you talk to Deputy Dukes?
- 6 A Probably two or three minutes.
- 7 Q Okay. And at that point then, is that when you go to
- 8 the hospital?
- 9 A No. Then I go back to show them the site --
- 10 Q Okay.
- 11 A And explained to them what happened, met with
- 12 Detective Williams at that point and went through telling
- 13 them what happened. And then I was taken to the hospital.
- 14 Q Okay. Did anybody from forensics or identification,
- 15 did any of those folks show up while you were still there
- 16 before you went to the hospital?
- 17 A There was a lot of people there. Who they were, I
- 18 don't know.
- 19 Q Don't know who they are. Okay. But do you, but you
- 20 show them basically where everything happened.
- 21 A Right.
- 22 Q Okay. How long would you say you're there before
- 23 going to the hospital?
- 24 A I have no idea.
- 25 Q Okay. Do you have any recollection as to what time

Amy Sandifer
Cross-examination by Ms. Hodges

1 you get to the hospital?

2 A I have no idea.

3 Q All right. But you're sure that you're there for
4 about three and a half to four hours.

5 A Yes.

6 Q Okay. And at the hospital I think you testified you
7 don't remember who gave you the information to write
8 your -- the paperwork to write your written statement.

9 A I don't.

10 Q Okay. Was your husband at the hospital with you?

11 A Yes.

12 Q Okay. Anybody, any other officers at the hospital
13 with you?

14 A There were several that came in there.

15 Q I assume somebody took photographs of you there.

16 A Yes.

17 Q Was that same person that took photographs the same
18 person that gave you the paperwork to write your statement?

19 A I don't know. Could have been.

20 Q Could have been, but you're not sure. All right. And
21 then when you leave the hospital, and you go to the
22 sheriff's department, is that right?

23 A That's right.

24 Q And at the sheriff's department you're taken up to the
25 investigative division, the criminal investigation

Amy Sandifer
Cross-examination by Ms. Hodges

- 1 division.
- 2 A That's right.
- 3 Q And who do you talk to there?
- 4 A Detective Williams.
- 5 Q Anybody else?
- 6 A Detective Bryant.
- 7 Q Okay. Anybody other than those two?
- 8 A I think Detective Dukes came up there.
- 9 Q Okay.
- 10 A Or Officer Dukes.
- 11 Q Because Officer Dukes is -- is he on road patrol or in
- 12 the detective division?
- 13 A No. He's road patrol. He was the first one on the
- 14 scene.
- 15 Q Okay. So he drives the black and white car and wears
- 16 the regular officer patrol uniform. And then that's where
- 17 you look at this photographic lineup.
- 18 A Yes.
- 19 Q That's also where you see the defendant, is pointed
- 20 out to you, isn't that correct?
- 21 A Eventually when I'm leaving.
- 22 Q All right. And so at this point you've been with the
- 23 police officers basically from about, what, 6:30 or so on,
- 24 6:30 to 11:00? You've been in contact with the police the
- 25 entire time, is that right?

Amy Sandifer
Cross-examination by Ms. Hodges

1 A I'm in contact with the police all the time.

2 Q Well, 24/7 because you're married to an officer. But
3 in terms of, in relationship to this particular
4 investigation.

5 A I guess so.

6 Q You're essentially with the police officers all of
7 that time.

8 A Which I believe is pretty normal when you're a victim,
9 isn't it?

10 Q You'd agree with me that it would not be normal for
11 somebody to be shown the suspect in their case while
12 they're talking to the officers making photographic
13 identification, wouldn't you?

14 A I wasn't shown anyone while I was making a
15 photographic identification.

16 Q Would you agree with me that it would not be normal to
17 have the two of you in the same section of the building at
18 the same time?

19 A I'm not in law enforcement. Therefore I don't know
20 what normal proceedings are.

21 Q Okay. You don't know whether it's normal that
22 somebody be with you for four of five hours that night, do
23 you?

24 A No. Never been a victim either.

25 Q Okay. The photographs that the solicitor showed you,

Amy Sandifer
Cross-examination by Ms. Hodges

1 those are accurate depictions of your injuries, is that
2 correct?

3 A Yes, other than, I mean, you can't really see the -- a
4 picture can't capture the knot on my head.

5 Q Okay. So there was a knot on your head. But you
6 didn't require any stitches or anything like that.

7 A No.

8 Q Weren't admitted to the hospital for overnight for
9 treatment or observations.

10 A No.

11 Q Okay. Other than, I mean, were you prescribed any
12 medications?

13 A I was given pain medication.

14 Q Okay. But other than that, you weren't prescribed any
15 other medications --

16 A No.

17 Q -- or physical therapy --

18 A No.

19 Q -- or any followup. That was not required.

20 A No.

21 Q Okay. When did you receive your wedding ring and
22 engagement ring back?

23 A That night.

24 Q That night. Do you remember where you were when you
25 received them back?

Amy Sandifer
Cross-examination by Ms. Hodges

1 A In the detective division.

2 Q And this is at the time when -- after you'd been
3 released from the hospital.

4 A Yes.

5 Q And you also get the iPod back at that point?

6 A Yes.

7 Q Okay.

8 MS. HODGES: Beg the Court's indulgence for one
9 moment.

10 (Pause.)

11 Q And at the time that you are initially getting home
12 and talk with your husband and tell him what has happened,
13 he's with you the entire time, is that correct?

14 A As well as I can remember.

15 Q Okay. And you were talking with him about the case.
16 Was he giving you any information regarding kind of what to
17 expect as a victim, what was going to happen in the
18 investigation?

19 A He was saying very little.

20 Q He was saying very little?

21 A He was very upset, and he had very little to say.

22 Q Okay. In fact, he had a verbal confrontation with
23 Mr. Lyles at the sheriff's office, didn't he?

24 A After it was all over and we were heading home.

25 Q Okay.

Amy Sandifer
Redirect examination by Mr. Gowdy

1 MS. HODGES: That's all I have, Your Honor.

2 MR. GOWDY: Briefly on redirect, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. GOWDY

5 Q Ms. Sandifer, let me see if I can find...

6 MR. GOWDY: Can I inquire of defense counsel, my
7 lineup that was --

8 MS. HODGES: It should all be up here. I think I put
9 everything back up here.

10 Q Ms. Sandifer, State's 60, the lineup where you picked
11 the defendant, defense counsel just asked you whether or
12 not you saw Mr. Lyles again on March the 7th, right?

13 A Right.

14 Q I want to be absolutely clear for the jury. When you
15 saw him at the sheriff's department was it before or after
16 you had circled his mug shot --

17 A After.

18 Q -- on that?

19 A After.

20 Q After. Was it a chance meeting, a haphazard meeting,
21 or did they send you directly to confront him?

22 A I asked where he was, and my husband walked me by the
23 interrogation room on our way home.

24 Q You had already identified him as your assailant
25 before you ever saw him at the sheriff's department,

Amy Sandifer
Redirect examination by Mr. Gowdy

1 correct?

2 A Most definitely.

3 Q All right. Defense counsel asked you about a
4 statement that you gave to law enforcement within a couple
5 of hours of the crime happening.

6 A Right.

7 Q I want to ask you. That is your statement. Is that
8 your signature?

9 A It is.

10 Q At 9:34 on March the 7th, is when you would have
11 written that. Did you write that in your own hand or did
12 somebody write it for you?

13 A No. That's my own hand.

14 Q Your own handwriting a couple of hours after the
15 incident took place, correct?

16 A That's correct.

17 Q I want you to look about two-thirds of the way down on
18 that first page. Did you tell law enforcement that this
19 defendant got out of a car or truck with a beer bottle?

20 A Yes.

21 Q Did you in your statement on March the 7th, a couple
22 of hours after the crime occurred, did you tell law
23 enforcement that he said, "Give me all of your shit,
24 Bitch"?

25 A Yes.

Amy Sandifer
Redirect examination by Mr. Gowdy

1 Q Did -- and it is in your statement, correct?

2 A Yes.

3 Q Did you tell law enforcement within a couple of hours
4 of the crime taking place on March the 7th that he hit you
5 with a beer bottle?

6 A Yes.

7 Q Did you tell law enforcement within a couple of hours
8 of the crime taking place on March the 7th of 2009 that he
9 struck you with his hand?

10 A Yes.

11 MR. GOWDY: One moment, Your Honor.

12 (Pause.)

13 MR. GOWDY: I'm searching for one photograph, Your
14 Honor. Just a moment of the Court's time.

15 (Pause.)

16 Q Last question. Okay. I'm going to show you
17 State's 36 which has previously been identified by
18 Ms. Karen Mathis as her truck. Do you see the license tag?

19 A Yeah.

20 Q I want you to look on the third page of the statement
21 that you gave to law enforcement on March the 7th of 2009
22 just a couple of hours, Ms. Sandifer, after you were
23 assaulted. Can you tell us what tag number you gave to law
24 enforcement?

25 A

Amy Sandifer
Recross-examination by Ms. Hodges

1 Q . Thank you, Ms. Sandifer.

2 RECROSS-EXAMINATION

3 BY MS. HODGES

4 Q How did your husband know where Mr. Lyles was?

5 A I'm sorry?

6 Q How did your husband know where Ms. Lyles was that
7 night?

8 A I have no idea.

9 Q But yet your husband was able to walk you directly by
10 him, right where he was.

11 A I guess, I guess he asked somebody.

12 Q Okay. But you didn't know.

13 A I don't know.

14 Q But your husband was able to walk you directly to him
15 that night when you asked where he was.

16 A There's a lot about that that's fuzzy. You know, I
17 don't know details of what Tom was doing that night.

18 Q Okay. Thank you, ma'am.

19 THE COURT: You may step down.

20 We're going to take a short break. So I'm going to
21 ask the jury to please go to your jury room. Do not
22 discuss the case. I'll bring you back after that short
23 break to continue.

24 (The following takes place outside the presence of the
25 jury.)

Ashley Lynn White
Direct examination by Mr. Barnette

1 THE COURT: Court is in recess for ten minutes.
2 Let me see the lawyers before you leave, please.
3 (Whereupon, a recess was taken.)
4 THE COURT: All right. Are we ready for the jury?
5 MR. GOWDY: Yes, sir, Your Honor.
6 THE COURT: All right. Bring them in.
7 (The following takes place in the presence of the
8 jury.)

9 THE COURT: Okay. You may proceed.

10 MR. BARNETTE: The state would like to call Ashley
11 White to the stand please.

12 ASHLEY LYNN WHITE, having been
13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION BY MR. BARNETTE

15 Q Ma'am, if you would, state your full name for the
16 record, please.

17 A Ashley Lynn White.

18 Q And, Ms. White, where do you work at?

19 A I work at Cracker Barrel.

20 Q And back on March the 7th of 2009, who was you with
21 that day?

22 A I was with -- well, he's my husband now. But at the
23 time he was my fiancé.

24 Q And that evening, where had y'all been that evening?

25 A We were at the Pizza Hut in Landrum.

Ashley Lynn White
Direct examination by Mr. Barnette

1 Q And after you left the Pizza Hut, where did y'all go
2 after that?

3 A We were headed home which is off of Rainbow Lake Road.

4 Q Okay. As you went on Rainbow Lake Road, could you
5 tell the jury what you saw when you went down that road?

6 A As we turned onto Rainbow Lake Road we were headed to
7 the house. We saw a -- I guess it's a burgundy truck. I
8 can't really remember the color. I said red or burgundy.
9 It's one of the two.

10 But as we approached there was a black gentleman
11 hovered over a woman who was sitting in a -- she wasn't
12 really in the ditch. She was on the top part of the ditch.

13 So as we proceeded I was driving the vehicle. I chose
14 to stop. My husband then rolled down the window, which is
15 on the passenger side, is where it happened. As he rolled
16 the window down he asked if everything was okay. The
17 gentleman said everything was fine. But the look on the
18 woman's face, you could tell that it wasn't fine.

19 We then proceeded to drive up a little bit further
20 towards the house. As we did I'm still looking in the
21 rearview mirror because I know there's something wrong.
22 I'm not sure know what it is. I didn't know if it was a
23 domestic violence case or what. I didn't really know. As
24 I looked in the rearview mirror I did see the black
25 gentleman hit her with a glass bottle.

Ashley Lynn White
Direct examination by Mr. Barnette

1 We proceeded to drive on. As we go on I then get out
2 of the vehicle, stopped up, which we live off Grassland
3 Road which is maybe about, maybe a mile from where the
4 incident happened. We were almost to the road we live on.

5 I get out of the car, and I'm going to walk back to
6 the woman because my husband did not trust to stop.

7 So at that time he calls 9-1-1. We're headed back
8 towards the scene. Get back in the car and everything is
9 going back. And as we go back towards where we saw
10 everything the woman was actually walking by herself back.

11 At that time we then, you know, she gave us the tag
12 number. We told her we are with 9-1-1. She gave us the
13 information. We gave it to them and went back to the
14 house.

15 I went home and got back in my vehicle, and I took off
16 towards the direction I thought the truck went. And then
17 as I did not find the truck I came back to the scene where
18 it started and gave my statement to the police.

19 Q When you was in the car and he approached the car, you
20 said you felt something was wrong at the time.

21 A Yes.

22 Q What did he say? I mean, what was the lady doing
23 during this time?

24 A At the time she was still, she was sat down. Well, I
25 wouldn't really say she was sitting. It wasn't really a

Ashley Lynn White
Direct examination by Mr. Barnette

1 squat or wasn't really laying. I don't really know how it
2 was. But she was on the ground. And he was -- she was
3 still there. You could tell she was scared.

4 At the time he did approach the vehicle he did touch
5 the top of the car on the passenger side, you know, but
6 she, I don't know. If I -- I don't really know. I can't
7 remember everything. I don't really.

8 Q Let me ask you this question. Did he have a beer
9 bottle on him?

10 A Yes.

11 Q Where did he have that beer bottle?

12 A In his hand.

13 Q And when you was driving -- when your husband was
14 driving, your boyfriend at that time was driving off, you
15 was looking in the rearview mirror.

16 A Yeah. Well, I was actually driving.

17 Q Oh, you were driving.

18 A Yes.

19 Q I'm sorry. And you looked in the rearview mirror.

20 MS. HODGES: Objection to leading, Your Honor.

21 MR. BARNETTE: I'll rephrase the question, Your Honor.
22 I'm sorry.

23 THE COURT: Okay.

24 Q What did you see, again, when you was looking in your
25 rearview mirror?

Ashley Lynn White
Cross-examination by Ms. Hodges

1 A I saw the gentleman hit her with the glass bottle of
2 the beer.

3 Q Where did he hit her at?

4 A On the left side of her head.

5 Q And your husband was sitting where in the car?

6 A He was the passenger of the car.

7 Q Did you get a look at the man?

8 A I did.

9 Q Do you see him in the courtroom here today?

10 A I do.

11 Q Could you identify what he's wearing here today,
12 ma'am?

13 A He is wearing a white long-sleeve shirt.

14 Q And is he in between the two folks that have coats on?

15 A He is.

16 MR. BARNETTE: Your Honor, I'd like the record to
17 reflect that she has identified the defendant.

18 THE COURT: It shall.

19 Q Please answer any questions Ms. Hodges may have for
20 you. Thank you, ma'am.

21 CROSS-EXAMINATION

22 BY MS. HODGES

23 Q Ms. White, my understanding is at this time your last
24 name was Dile, is that correct?

25 A Yes, ma'am.

Ashley Lynn White
Cross-examination by Ms. Hodges

1 Q So then the voluntary statement I have of Ashley Dile
2 is actually your statement.

3 A Yes.

4 Q Have you had an opportunity to review your statement?

5 A It was given to me last Tuesday.

6 Q Okay.

7 A I -- it's in my purse where it stayed and has been
8 stayed. I have not read it over, no.

9 Q You didn't read it over after you saw it.

10 A No.

11 Q Do you remember whether you wrote in your statement
12 that you actually saw him hit -- the man?

13 A I'm pretty sure I did.

14 Q Okay. I'm going to.

15 MS. HODGES: May I approach the witness, Your Honor?

16 Q May I ask you if this looks like your statement?

17 A It is definitely my statement.

18 Q Okay. If you could, read through that for me and
19 refresh your recollection.

20 A Okay.

21 Q And you don't actually say in that statement that you
22 actually saw him hit her.

23 A Actually, it does. It says he hits her knocking her
24 back down.

25 Q Okay. Knocking her back down?

Ashley Lynn White
Cross-examination by Ms. Hodges

- 1 A Yes.
- 2 Q So she was actually standing up.
- 3 A At the time we drove up, yes, ma'am, she was getting
4 up.
- 5 Q Okay. So you didn't see any dragging going on.
- 6 A No, ma'am.
- 7 Q Okay. And you see somebody be hit with a beer bottle,
8 knocked down, and you drive off.
- 9 A We drove to the mailbox that was on the very upside,
10 yes, ma'am.
- 11 Q Okay. And how far was that?
- 12 A Not even a half a mile.
- 13 Q Okay. And you immediately turn around?
- 14 A Immediately, no, ma'am. At the time that we drove
15 back towards our house there was a white pickup truck that
16 drove going in the opposite direction as us. I did flash
17 my brakes to see if he would stop.
- 18 Q And he didn't.
- 19 A He did not. He did keep going.
- 20 Q Okay.
- 21 A We did proceed to leave, before we turned around, yes.
- 22 Q So how long were you gone before you turned around?
- 23 A Not even, not even two minutes.
- 24 Q Not even two minutes.
- 25 A No, ma'am.

Ashley, Lynn White
Cross-examination by Ms. Hodges

1 Q Okay. And by the time you got back to the woman that
2 was on the side of the road, Ms. Sandifer, by the time you
3 got back the truck had already pulled off.

4 A Correct, yes.

5 Q Okay. And when you first see her she is on the
6 ground. It's hard to describe kinda her exact position,
7 but she was on the ground.

8 A Yes. Well, it's a ditch. It's got a hill. And then
9 it's a ditch. So you can't really tell if she's laying or
10 sitting with the way that the hill is on the ditch.

11 Q Okay. But she is, she's clearly from what you're able
12 to see, she's clearly at that top of the rise of the ditch.

13 A Yes.

14 Q Okay. Not, not back in the woods.

15 A From where the ditch is and from the road, I would say
16 it's more closer to the woods than it was the road, yes.

17 Q Okay. But it's more as to the rise as opposed to
18 anything else.

19 A Right.

20 Q Okay. Thank you, ma'am.

21 MS. HODGES: I have nothing further, Your Honor.

22 MR. BARNETTE: No further questions of this witness,
23 Your Honor. We would ask for her to be excused.

24 MS. HODGES: We have no objection.

25 THE COURT: You may step down. You may also be

Charles Michael White
Direct examination by Mr. Barnette

1 excused.

2 (Whereupon, the witness was excused.)

3 MR. BARNETTE: Your Honor, I would like to call Mr.
4 White to the stand.

5 CHARLES MICHAEL WHITE, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BARNETTE

8 Q If you would, sir, please give your full name for the
9 record, please.

10 A Charles Michael White.

11 Q And back on March 7th of 2009, where was you living
12 at, sir?

13 A With my mom and dad on Grassland Road.

14 Q Okay. On that evening, where had you ate at that
15 evening?

16 A We had picked up Pizza Hut from -- the delivery to
17 take home.

18 Q And who was with you?

19 A My fiancée at the time, Ashley.

20 Q Is that who just testified?

21 A Yes, sir.

22 Q Was she driving?

23 A Yes, sir.

24 Q As y'all was driving down the lane, down the road,
25 which road was you driving down?

Charles Michael White
Direct examination by Mr. Barnette

1 A We had just turned from Melvin Hill onto Rainbow Lake.

2 Q If you would, tell the jury what you saw once you
3 turned on Rainbow Lake Road.

4 A We seen a burgundy truck setting on the oncoming lane.
5 And as we got closer we seen a man hovered over a woman in
6 the ditch.

7 Q As y'all approached did you want to stop?

8 A I can keep going.

9 Q You thought it was trouble?

10 A Yes, sir.

11 Q But did your wife want to stop?

12 A Yes, sir.

13 Q So y'all stopped. What happened then? What did you
14 see?

15 A We, we stopped, and we rolled down the window. And I
16 asked him if everything was okay. He said yes.

17 And at that time I looked at her, and she didn't look
18 like she was okay. She had her hands up and was shaking
19 her head no.

20 And I said are you sure everything's okay, and he
21 said, yes, go the fuck on. And so we proceeded to pull
22 forward on up. And at that time I called 9-1-1.

23 Q Your wife was driving, is that right?

24 A Yes, sir.

25 Q Did she see something in the mirror?

Charles Michael White
Direct examination by Mr. Barnette

1 A Yes, sir. She said she saw him hit her with the beer
2 bottle.

3 MS. HODGES: Objection. Hearsay, Your Honor.

4 THE COURT: Overruled.

5 Q Say that again so the jury can hear it.

6 A He -- as I was on the phone with 9-1-1 she said that
7 he had just hit her with a beer bottle.

8 Q And did, did y'all stop?

9 A Yes, sir.

10 Q Did she get out of the car?

11 A Yes, sir.

12 Q Did you want to go back?

13 A Not really, but that was because I didn't know what
14 was going to happen or go on or anything. I didn't know
15 what was the whole case or anything.

16 Q Did y'all see a white truck drive by?

17 A Yes, sir.

18 Q And did she try to flash him when he went by?

19 A Yes, sir.

20 MS. HODGES: Your Honor, I'm going to object to
21 leading.

22 THE COURT: Don't lead him.

23 Q Did a white truck drive by?

24 A Yes, sir.

25 Q What did she do when the white truck's driving by?

Charles Michael White
Direct examination by Mr. Barnette

1 A We -- she flashed them down and tried to get them to
2 stop, but they didn't. They kept on going. So we turned
3 around and went back.

4 Q When y'all stopped the first time to see what was
5 going on did the defendant have anything in his hand?

6 A Yes, sir. He had a beer bottle.

7 Q What kind of beer bottle was it, do you remember?

8 A It was a tall beer bottle like a Colt 45 or something.

9 Q How was he holding it?

10 A He had it in his hand by the skinny part of the
11 bottle, by the neck of it.

12 Q Was it full? Did it have anything in it?

13 A It had some in it, yes, sir, but it was not completely
14 full.

15 Q Do you see the man that you saw on that day in the
16 courtroom here today?

17 A Yes, sir.

18 Q Can you point at him or identify what he is wearing,
19 sir?

20 A It's the man in the white shirt between the woman and
21 the other man.

22 MR. BARNETTE: Your Honor, I'd like the record to
23 reflect he has identified the defendant in this case.

24 THE COURT: It shall.

25 Q Please answer any questions Ms. Hodges may have for

Charles Michael White
Cross-examination by Ms. Hodges

1 you. Thank you, sir.

2 A You are welcome.

3 MS. HODGES: Beg the Court's indulgence just a minute,
4 Your Honor.

5 (Pause.)

6 CROSS-EXAMINATION

7 BY MS. HODGES

8 Q Mr. White, how long would you say that you and your
9 wife actually observed this whole incident going on?

10 A Probably about a minute.

11 Q About a minute?

12 A Yeah. We done it as we was driving out. She watched
13 as I was dialing 9-1-1.

14 Q Okay. And you said that the way he was holding the
15 beer bottle, he was kinda holding it like, I mean, if my
16 pen is the beer bottle, was holding it like this?

17 A Yes.

18 Q Is that correct? So the blue end of my pen would be
19 at the top, would be at the top of the bottle, and then
20 this? Was it like a 40-ounce beer bottle?

21 A Yeah. It had a skinny neck and then got wider at the
22 bottom.

23 Q Skinny neck and kinda bigger on the bottom. The tip
24 of my pen would be where the bigger bottom would be, right?

25 A Yes.

Charles Michael White
Cross-examination by Ms. Hodges

1 Q Okay. And you've been in the courtroom this
2 afternoon.

3 A Yes, ma'am.

4 Q And basically you've heard all the testimony in terms
5 of -- and seen everybody else identify who Mr. Lyles is, is
6 that correct?

7 A Yes, ma'am.

8 Q And you only saw him for just a minute that day, is
9 that right?

10 A Yes, ma'am.

11 Q Okay. And you didn't see any dragging going on.

12 A No, ma'am.

13 Q Okay. And, in fact, when you called 9-1-1 and told
14 Ms. Sandifer that you had 9-1-1 on the phone, she wasn't
15 particularly interested in talking to 9-1-1 at that point,
16 was she?

17 A No. She was trying to get back to her car and said
18 that her husband was a cop and that --

19 Q Said her husband was a cop. And she actually cussed
20 you out, didn't she?

21 A Well, anybody would, I mean, when you're scared like
22 that, yes, ma'am.

23 Q So somebody is offering you help and calling 9-1-1
24 because you've just been attacked by this man, and you're
25 telling me that the natural reaction is to cuss that person

Charles Michael White
Cross-examination by Ms. Hodges

1 out that's offering you help.

2 A Well, she did give us the tag number too.

3 Q Okay. So she gave you the tag number but has
4 absolutely no desire to talk to 9-1-1, isn't that right?

5 A Yes, ma'am.

6 MR. BARNETTE: Your Honor, I'm going to object to
7 this. I don't know what the relevance is of this line of
8 questioning.

9 THE COURT: Overruled.

10 Q And you just heard the description. I think you said
11 that in your statement that you saw Ms. Sandifer sitting on
12 the bank, is that correct?

13 A Yes, ma'am.

14 Q Okay. And you didn't see any sort of hitting going on
15 or falling down or anything like that.

16 A No, ma'am.

17 Q Okay. Where exactly were you in the car? Because you
18 were on the passenger side of the car, is that right?

19 A Yes, ma'am.

20 Q All right. Where exactly were you on the passenger
21 side in relationship to the person that you saw in
22 confrontation with this woman?

23 A They were right beside me.

24 Q They were right beside you. And how far -- so if I'm
25 the car and you're the man right, I mean, right beside you

Charles Michael White
Redirect examination by Mr. Barnette

1 is basically like this?

2 A Yes. That's where he was standing. He was on this
3 side of the ditch, and she was on the other side.

4 Q And she was on the other side of the ditch. How far
5 away from him at that point was she?

6 A About four or five.

7 Q 4 or 5 feet?

8 A Yeah.

9 Q Okay. What kind of car were y'all in?

10 A 2006 Mazda 6, blue 4-door.

11 Q 4-door. That's all the questions I have. Thank you,
12 sir.

13 MR. BARNETTE: Just a couple on redirect, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BARNETTE

16 Q Sir, you don't know what happened before y'all got
17 there, do you?

18 A Sir?

19 Q You don't know what happened before y'all drove up
20 there.

21 A No, sir.

22 Q And when you drove up did she look scared --
23 Ms. Sandifer?

24 A Yes, sir, yes, she did.

25 Q Did you feel like something was definitely wrong?

Lorin Williams
Direct examination by Mr. Barnette

1 A Yes, sir.

2 Q And that's the reason why you called 9-1-1.

3 A Yes, sir.

4 Q Thank you, sir.

5 THE COURT: You may step down.

6 MR. BARNETTE: Your Honor, I would like to call Lorin
7 Williams to the stand.

8 LORIN WILLIAMS, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BARNETTE

11 Q If you would, sir, state your full name for the
12 record, please.

13 A Lorin Williams.

14 Q Where do you work at, sir?

15 A Spartanburg County Sheriff's Office.

16 Q What is your position there, sir?

17 A I'm a violent crime investigator with the sheriff's
18 office.

19 Q Back on March the 7th of this year, was you working
20 that day, sir?

21 A Yes, sir, I was.

22 Q And did y'all receive a call about an armed
23 robbery-kidnapping type situation that occurred?

24 A Yes, sir. Actually I was on call that weekend.
25 Myself and Investigator Bryant received the call and

Lorin Williams
Direct examination by Mr. Barnette

1 responded out to where uniform patrol was.

2 Q And when you got there did y'all receive information
3 about a tag number on a truck?

4 A Yes, sir.

5 Q Tell the jury what happened. When you got -- do you
6 remember what the tag number was that was reported to
7 y'all?

8 A Not right off the top of my head.

9 Q But what kind of truck was it, sir?

10 A It was a Toyota. We had -- well, the pictures are not
11 up there.

12 Q And when you received that information what, what did
13 y'all do? Was a BOLO sent out?

14 A It was. We actually -- the tag actually came back to
15 a similar truck. It was found. And that truck, the tag,
16 it was determined that the tag number was actually one
17 number off.

18 Q So it was one number off, but you tracked that truck
19 down.

20 A That's correct.

21 Q And you found out that wasn't the truck.

22 A That's correct.

23 Q So the BOLO was still maintained.

24 A That's correct.

25 Q And was that sent to everybody in Spartanburg County?

Lorin Williams
Direct examination by Mr. Barnette

- 1 A It was.
- 2 Q Did y'all receive information that the Duncan police
3 department had seen a truck that matched that description?
- 4 A Yes, we did.
- 5 Q And where did they see this truck at?
- 6 A I believe it was off Highway 290, Hilly Hill Road, on
7 the back side of Hilly Hill.
- 8 Q And did they make a traffic stop?
- 9 A They did.
- 10 Q And was that the truck? Was that truck reported
11 stolen?
- 12 A Yes, it was.
- 13 MS. HODGES: Your Honor, I'm going to object to the
14 solicitor leading this witness as well.
- 15 THE COURT: Sustained.
- 16 Q Did you receive information that a truck of that
17 style -- was it stolen?
- 18 A Yes, sir. Once, once we had the correct tag number it
19 was confirmed that the truck had been stolen.
- 20 Q And where had it been stolen from?
- 21 A I believe it was from the car wash in Lyman city's
22 jurisdiction.
- 23 Q So that was in the city of Lyman?
- 24 A Yes, sir.
- 25 Q Is the city of Lyman in Spartanburg County?

Lorin Williams
Direct examination by Mr. Barnette

1 A It is.

2 Q Did you go out to that scene where they made the stop?

3 A Yes, sir, I did.

4 Q And when you went out there was the defendant out
5 there?

6 A Yes, sir, he was.

7 Q And did you approach the defendant?

8 A I did.

9 Q Had he been arrested by the Duncan police officers?

10 A I believe so. He was, he was already in custody. He
11 was, he was in the back of a, a patrol unit.

12 Q Did you observe the truck out there?

13 A Yes, sir, I did.

14 Q And did you observe the defendant out there?

15 A Yes, sir.

16 MR. BARNETTE: Could I have a second, Your Honor,
17 please?

18 (Pause.)

19 Q When y'all secured the defendant did you find anything
20 in his pocket, sir?

21 A Yes, sir, I did. I found, I found an iPod in his
22 front pocket.

23 Q Let me show you what's been marked as State's
24 Exhibit 17. Is that the truck that was at the scene?

25 A Yes, sir, it is.

Lorin Williams
Direct examination by Mr. Barnette

1 MR. BARNETTE: Your Honor, I would like to enter that
2 into evidence at this time.

3 MS. HODGES: I have no objection to Exhibit 17, Your
4 Honor.

5 THE COURT: It's admitted.

6 (Photograph marked State's Exhibit No. 17.)

7 MR. BARNETTE: May I publish it to the jury, Your
8 Honor?

9 THE COURT: You may.

10 Q Is that the truck y'all saw at the scene?

11 A Yes, sir, it is.

12 Q Let me show you what's been admitted into evidence as
13 State's Exhibit 31. Is that the iPod you got from the
14 defendant?

15 A Yes, sir, it is.

16 MR. BARNETTE: Your Honor, I'd like to publish this to
17 the jury at this time.

18 THE COURT: You may.

19 Q And did Ms. Sandifer identify that as her iPod?

20 A Yes, sir, she did.

21 Q And was that returned back to her?

22 A It was.

23 Q After that, after the defendant was taken into
24 custody, Ms. Sandifer went to the hospital?

25 A Yes, sir, she did.

Lorin Williams

Direct examination by Mr. Barnette

1 Q And did you meet her back at the sheriff's department?

2 A Yes, sir.

3 Q And did you create a lineup?

4 A I did.

5 Q Showing you State's Exhibit No. 60. Is this the
6 lineup you created, sir?

7 A Yes, sir, it is.

8 Q Did Ms. Sandifer come to the sheriff's department to
9 look at this lineup?

10 A She did.

11 Q Prior to seeing this lineup did she ever see the
12 defendant?

13 A No, sir.

14 Q When you showed her the lineup did she hesitate, or
15 did you tell her that this person is in the lineup, or how
16 did you tell her about the lineup?

17 A No, sir. I simply showed her. I don't show the
18 lineup right off. I explain to them that I have a photo
19 lineup with six people on it, the person that did this may
20 or may not be on this lineup. And I explain to them that
21 we don't know how old pictures are, things change on
22 pictures, hair changes, facial hair changes, things such as
23 that. And then I hand her the piece of paper and ask her
24 if there's anyone on that page that she recognizes.

25 Q And did she recognize somebody?

Lorin Williams
Direct examination by Mr. Barnette

- 1 A Yes, sir, she did.
- 2 Q And did you have her circle the individual she
- 3 recognized?
- 4 A I asked her to circle the picture that she recognized
- 5 and initial the site.
- 6 Q And on the back of the lineup, who filled this part
- 7 out right here, sir?
- 8 A I fill out the case number, the date, time and
- 9 location, her name, the relevant information there, as well
- 10 as the photograph that was identified. And then I ask her
- 11 to tell me how she knows and what she knows about that
- 12 person that she has identified. And she filled in the rest
- 13 of that.
- 14 Q So the rest of this was filled out by her?
- 15 A Yes, sir.
- 16 Q How quickly did she pick that individual out?
- 17 A Almost immediately.
- 18 Q And do you see the person in this courtroom today that
- 19 you saw out there in Duncan where they made the traffic
- 20 stop?
- 21 A Absolutely, yes, sir.
- 22 Q And the man that you took in custody?
- 23 A Yes, sir.
- 24 Q Can you identify him and say what he is wearing, sir?
- 25 A Mr. Lyles sitting there between his counsel -- white

Lorin Williams
Cross-examination by Ms. Hodges

1 shirt.

2 MR. BARNETTE: Your Honor, I'd like the record to
3 reflect that he has identified the defendant in this case.

4 THE COURT: It shall.

5 Q Please answer any questions Ms. Hodges may have for
6 you, sir. Thank you.

7 CROSS-EXAMINATION

8 BY MS. HODGES

9 Q Detective Williams, when you recovered this iPod
10 supposedly from Mr. Lyles' pocket did you do any sort of
11 property receipt or evidence sheet?

12 A No, ma'am.

13 Q Such as that?

14 A No, ma'am. I took it out of his pocket and laid it on
15 the trunk of our patrol car for I. D. to recover and
16 photograph.

17 Q Okay. And would I. D. have actually then supposedly
18 done an evidence sheet for it?

19 A A recovery, yes, ma'am.

20 Q A recovery.

21 A A property sheet.

22 Q Okay. Have you -- and then you didn't -- did you do
23 any sort of like supplemental report or write up an
24 investigation about recovering that iPod?

25 A I'm not sure what we would have done at that point.

Lorin Williams
Cross-examination by Ms. Hodges

- 1 Q Well, what are you supposed to do at that point?
- 2 A Well, I mean, you know, the reports are done.
- 3 Investigator Bryant's writeup may have covered, you know,
- 4 everything that was done at the scene. I don't recall.
- 5 Q Did you have your -- taken a chance, opportunity, to
- 6 review what Investigator Bryant wrote up?
- 7 A Briefly.
- 8 Q Okay. And did it say anything about you recovering
- 9 the iPod?
- 10 A I can look through it again. I don't recall that part
- 11 of it.
- 12 Q So you do not do your own supplemental report in terms
- 13 of what you did in this case, to document what you did from
- 14 your memory.
- 15 A No, ma'am.
- 16 Q Reason why you didn't do that?
- 17 A No, ma'am.
- 18 Q Isn't that pretty much standard procedure to do that?
- 19 A Well, you know, in a situation like this the majority
- 20 of what I did was the, the lineup.
- 21 Q The majority of what you did. But you did other
- 22 things in addition to that, didn't you?
- 23 A As far as, you know, hunting for a suspect.
- 24 Q Right.
- 25 A And then --

Lorin Williams
Cross-examination by Ms. Hodges

1 Q Recovering the iPod, talking to people on, at the
2 scene where the truck was recovered. I mean, you did other
3 things, isn't that right?

4 A Sure.

5 Q Okay. And how many cases have you worked between now
6 and March the 7th of 2009?

7 A A lot.

8 Q And the purpose of doing those reports is so that you
9 can refresh your recollection, your memory, of what you
10 actually did because you write your reports kind of
11 contemporaneously with your investigation, isn't that
12 right?

13 A Sure.

14 Q So at this point we have no documentation of this iPod
15 being recovered from Mr. Lyles' pocket.

16 A I believe --

17 Q That you know of.

18 A No. I believe Investigator Bryant's writeup does
19 reflect that he saw the iPod as well.

20 Q He saw the iPod.

21 A Uh-huh.

22 Q Okay.

23 A There was some confusion between Investigator Bryant
24 and myself in regards to the iPod.

25 Q Excuse me?

Lorin Williams
Cross-examination by Ms. Hodges

1 A He found it. He opted to leave it so I. D. could
2 photograph it in his pocket.

3 When I got to Mr. Lyles and we were going to transport
4 him to the sheriff's office, we changed handcuffs because
5 at that point Duncan P. D. still had their handcuffs on
6 him.

7 I padded him down for our safety, our officer's
8 safety, before we put him into one of our cars. And at
9 that point I found the iPod.

10 I did not realize at that point that Investigator
11 Bryant had already found the iPod and left it for I. D. to
12 photograph.

13 Q Okay. And unless I started asking you those questions
14 you weren't going to let us know about that, were you?

15 Okay. The interview that you had with Ms. Sandifer at
16 the sheriff's office, you talked to her at your cubicle, is
17 that correct?

18 A That's correct.

19 Q The best of my understanding is the way that C. I. D.
20 is set up each of the investigators sort of has their own
21 desk and they're kind of set up in cubicle, sort of in
22 kinda like groups of three or four or whatever.

23 A Well, violent crime has our -- we have our own
24 section.

25 Q Okay. All right. So basically there's you and how

Lorin Williams
Cross-examination by Ms. Hodges

1 many other investigators are involved approximately?

2 A There's myself and four other.

3 Q Four others.

4 A Uh-huh.

5 Q And Mr. Lyles was actually taken from the scene in
6 Duncan to the sheriff's office, is that correct?

7 A Correct.

8 Q All right. And he was actually taken upstairs to C.
9 I. D., is that correct?

10 A To an interview room, yes, ma'am.

11 Q To an interview room. All right. And those interview
12 rooms have a door with a window in them, isn't that
13 correct?

14 A Yes, ma'am.

15 Q So somebody actually can walk by the interview room
16 and see who is in that interview room, right?

17 A You can.

18 Q You can.

19 A Uh-huh, sure.

20 Q And you actually interviewed Ms. Sandifer at your desk
21 in C. I. D. at the same time Mr. Lyles is in upstairs as
22 well.

23 A That's correct. She was at, in my cubicle, and he
24 would have been in an interview room.

25 Q Okay. And did you have any conversation with Deputy

Jason Bryant
Direct examination by Mr. Gowdy

1 Sandifer as to the fact that Mr. Lyles was there?

2 A I don't recall speaking to him about him being there
3 at all.

4 Q Okay. So you don't know who told them that he was
5 there?

6 A No, ma'am.

7 Q Him being -- you don't know who told Deputy Sandifer
8 Mr. Lyles was there. Let me make that clear on the record.

9 A That's correct.

10 Q Okay. Thank you, Investigator. That's all I have.

11 MR. BARNETTE: No further questions of this witness,
12 Your Honor.

13 THE COURT: You may step down.

14 MR. GOWDY: May it please the Court, Your Honor. The
15 state would call Detective Jason Bryant.

16 JASON BRYANT, having been
17 first duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. GOWDY

19 Q Good afternoon, Detective Bryant.

20 A How are you doing, sir?

21 Q I'm doing fine. Thank you. How long have you been in
22 law enforcement?

23 A Since 1996.

24 Q What department or division are you assigned to?

25 A I'm a violent crimes investigator.

Jason Bryant
Direct examination by Mr. Gowdy

1 Q And how long have you been a violent crimes
2 investigator?

3 A Since about 2004.

4 Q Detective Bryant, is the sheriff's department divided
5 into separate units -- detective, uniform patrol, I. D.?

6 A Yes, sir, absolutely.

7 Q And do each of those component departments or
8 divisions have discrete responsibilities?

9 A We do.

10 Q What's I. D.? When I say I. D., what's that known as?

11 A They process crime scenes and collect evidence and
12 photograph crime scenes.

13 Q As a detective do you ordinarily recover evidence, or
14 do you leave it for the I. D. department to do so?

15 A Generally we leave it for the I. D. department to do
16 so.

17 Q All right. I want to go back with you to March the
18 7th of 2009. Were you involved in, to some degree with the
19 investigation into Noel Lyles?

20 A I was, yes, sir.

21 Q I want to fast forward to the truck stop in Duncan.

22 A Yes, sir, on Rogers Road, yes, sir.

23 Q Yes, sir. Did you respond to the scene where the
24 truck was stopped?

25 A I did.

Jason Bryant
Direct examination by Mr. Gowdy

- 1 Q Who initiated the stop? Who made the stop?
- 2 A It was one of the municipal officers from around the
- 3 Lyman-Duncan-Wellford area.
- 4 Q Okay. So it was not a Spartanburg County sheriff's
- 5 deputy. It was a city police officer.
- 6 A Correct.
- 7 Q But you responded.
- 8 A I did.
- 9 Q Did you see the defendant?
- 10 A I did.
- 11 Q Where was he when you got there?
- 12 A When I got there he was already in custody by one of
- 13 the municipal officers, and they were dealing with him.
- 14 Q Did you pat him down?
- 15 A I did. I stood him up and began to speak with him
- 16 just briefly and introduced myself to him. And I did pat
- 17 him down.
- 18 Q Did you find anything in his pocket?
- 19 A I did.
- 20 Q What did you find, Detective Bryant?
- 21 A I found the iPod of Ms. Sandifer's in his -- if I can
- 22 refer to my notes just one second -- I believe it was his
- 23 right front pocket. Right front pocket, that's correct.
- 24 Q And did you put it back in his pocket for I. D. to
- 25 later take?

Jason Bryant
Cross-examination by Ms. Hodges

1 A I did. That, that was what I was going to do, was let
2 them photograph it in his pocket and then let them recover
3 it as they do a majority of the evidence.

4 Q And is that how you typically do it in your cases?

5 A That's correct.

6 Q Detective Bryant, on a scale of one to a hundred, with
7 a hundred being the same degree of certainty you are that
8 you're sitting in this courtroom right now, how certain are
9 you that you recovered a blue iPod from the pocket of Noel
10 Lyles?

11 A One hundred percent.

12 Q And how certain are you that you put it back?

13 A One hundred percent.

14 Q Please answer any questions the defense attorney may
15 have for you, Detective Bryant.

16 A Yes, sir.

17 CROSS-EXAMINATION

18 BY MS. HODGES

19 Q Did I. D. ever come out to the scene there on Rogers
20 Road?

21 A They did.

22 Q How long did it take them to get there from the time
23 that you -- would you know?

24 A They were not far behind us, but they were definitely
25 behind us as far as time-wise responding.

Jason Bryant
Cross-examination by Ms. Hodges

1 Q Okay. And were they on scene prior to Mr. Lyles being
2 taken from Rogers Road?

3 A I don't recall.

4 Q Okay. You were given a description as to what the
5 assailant, Ms. Sandifer's assailant, was wearing, is that
6 correct?

7 A If I could refer to my notes just a second, please.

8 (Pause.)

9 Q Direct you to the fifth line and the first paragraph
10 of your supplemental report.

11 A That's correct.

12 Q That tells you that he was wearing a lighter colored
13 shirt, is that right?

14 A Correct.

15 Q Okay. And how long would you say that you were there
16 on scene at Rogers Road?

17 A When I arrived at Rogers Road it was just momentarily
18 after the municipal officers had made the stop on Rogers
19 Road.

20 Q Okay.

21 A I would say within just a very few minutes. I was
22 actually, I was speaking with another individual in regards
23 to the matter.

24 Q Okay. Did you get there basically shortly after they
25 got there?

Jason Bryant
Cross-examination by Ms. Hodges

1 A Absolutely.

2 Q All right. And he's already in custody at that point
3 by the municipal officers?

4 A Correct.

5 Q Is he actually in the back of a patrol car or anything
6 at that point?

7 A When I first began to deal with Mr. Lyles it was just
8 momentarily after they had taken him into custody.

9 To the best of my recollection what he was doing was
10 he was actually on the ground and handcuffed. And if I
11 remember correctly, I believe I stood him up and began to
12 pat him down.

13 Q And then how long, do you remember how long, it was
14 before Investigator Williams got on the scene?

15 A It was just a few moments later.

16 Q Did he get there before or after I. D. got there?

17 A He definitely got there before I. D. did.

18 Q Okay. And who actually took the iPod into custody
19 prior to it being returned to Ms. Sandifer?

20 A I don't have the evidence sheets in front of me. I'd
21 hate to say without reviewing the documentation.

22 Q So there ought to be an evidence sheet for it, is that
23 what you're saying?

24 A Should be, yes, ma'am.

25 Q Okay. As well as there ought to be an evidence sheet

Troy Berry
Direct examination by Mr. Barnette

1 for the wedding ring and the engagement ring that
2 supposedly was recovered there as well, is that correct?

3 A Yes, ma'am.

4 Q Thank you, Investigator.

5 MR. GOWDY: Nothing on redirect, Your Honor.

6 THE COURT: You may step down.

7 MR. BARNETTE: Your Honor, the state would like to
8 call Troy Berry next.

9 TROY BERRY, having been first
10 duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BARNETTE,

12 Q Mr. Berry, if you would, talk loud enough so they can
13 hear you in the back, okay, and the judge can hear you, and
14 the clerk, and the court reporter can hear you.

15 A All right.

16 Q Give me your full name, please.

17 A Troy Berry.

18 Q I need for you to talk a little bit louder so she can
19 hear you.

20 A Troy Berry.

21 Q Thank you, sir. What town do you live in, sir?

22 A What town I stay in?

23 Q Yeah.

24 A I stay in Greer.

25 Q And back on March 7th of this year, that evening, did

Troy Berry
Direct examination by Mr. Barnette

1 you run into the defendant in this case?

2 A Not really. He ran into me. I was at somebody's
3 house and he came there.

4 Q Okay. Whose house was you at that night?

5 A I was at a guy named Fred's house, a friend of my
6 family.

7 Q And where did Fred live at?

8 A Woodstream Apartments in Wellford right off 29.

9 Q Okay. If you would, talk slow so they can hear you.
10 very clearly. Okay?

11 A He stayed in Wellford, apartments. It's apartments
12 called Woodstream in Wellford. And I was at apartments.

13 Q So you was over there visiting Fred. And did the
14 defendant come to those apartments or come to Fred's
15 apartment?

16 A Yeah. He come to the guy's apartment I was at.

17 Q Had you seen him before?

18 A I mean, I can't just remember. We don't know each
19 other like I mean, I can't just recall it, just say I
20 haven't seen him before. But I don't know him, no.

21 Q Okay. He came. Tell them what happened after he came
22 to Fred's apartment. Where did he go?

23 A What ya mean, where'd he go?

24 Q The defendant. Have you seen the defendant? Did you
25 see the defendant that night?

Troy Berry
Direct examination by Mr. Barnette

- 1 A Yeah. He come to Fred's house.
- 2 Q Okay. What did he do when he got to Fred's house?
- 3 A Him and Fred started talking. He was, he was trying
- 4 to hock something off, like I think some jewelry or
- 5 something, yeah.
- 6 Q Did he talk to you?
- 7 A No. I asked him for a ride somewhere, yeah.
- 8 Q So you asked him for a ride.
- 9 A Yeah. He was trying, he was trying to get off some,
- 10 hock some jewelry off. But I wasn't interested in whatever
- 11 he was talking about. I was saying basically I just need a
- 12 ride, you just take me over here I'll give you like \$5 or
- 13 something to run me over here, so.
- 14 Q So he did offer you some jewelry?
- 15 A He was trying to hock some jewelry off and asked me if
- 16 I knowed anybody interested in jewelry or did I, whatever,
- 17 did I want it.
- 18 Q What kind of jewelry was it?
- 19 A It been so long, it was like, it was like, I think it
- 20 was like, two rings. It be so long, I mean, it's been a
- 21 couple of months ago, man. I can't tell you. It was
- 22 rings, those two rings.
- 23 Q And you didn't need those.
- 24 A Nah. I just needed a ride. That's all I needed.
- 25 Q Okay. So what did you offer to pay him for a ride?

Troy Berry
Direct examination by Mr. Barnette

1 A Just a couple of dollars, gas money.

2 Q So he --

3 A He was taking me to my uncle's house on Hilly Hill
4 Road, but we never made it though.

5 Q So you wanted to get a ride, wanted him to give you a
6 ride where?

7 A To Hilly Hill Road right, right there, the street
8 right in front of Rogers Road where we got pulled over at.

9 THE COURT: Excuse me.

10 Mr. Berry, I want you to use that microphone if you
11 will, please. And try not to hit it. It distorts the
12 sound.

13 A All right.

14 Q Okay. Do you see the man that gave you the ride that
15 night in the courtroom here?

16 A Yes, sir.

17 Q Could you identify what he's wearing, sir?

18 A The dude right here with the -- between the, these two
19 people right here. The guy right here with the bald head.

20 Q And what type of, what color of, shirt is he wearing,
21 sir?

22 A White button-up, long sleeves.

23 MR. BARNETTE: Your Honor, could I have the record
24 reflect that he's identified the defendant?

25 THE COURT:-- It shall.

Troy Berry
Direct examination by Mr. Barnette

1 Q And you say what kind of -- was he driving -- what
2 kind of vehicle was he driving?

3 A It was a, it was truck. Man, I'm going to be honest.
4 Even though I seen the pictures, it was a dark colored
5 truck. I know it was either red or burgundy. I know it
6 was dark colored. It was dark when I -- when he came
7 there.

8 Q Was it dark outside? About what time was this?

9 A I can't remember, man. It was dark though. I know it
10 was dark.

11 Q It was nighttime?

12 A Yes, sir.

13 Q So and you got in the truck. And what happened after
14 that?

15 A We, we crossed right over 29, right here at 29. And
16 we like he was taking me my uncle's house right at Hilly
17 Hill Road. So as we went down toward, through Startex we
18 entered the bottom of Pine Street. And I seen like the
19 Duncan police sitting in. It's like a dirt spot where old
20 church used to be at on Pine Street -- Pine Street running
21 right into Rogers Road and Hilly Hill Road.

22 And as we passed the police he kind of panicked a
23 little bit. And I like, man, what's going on, you all
24 right. I'm like everything's straight, ain't it, you got
25 license. He's like yeah, yeah, yeah. By that time like,

Troy Berry

Direct examination by Mr. Barnette

1 you know, he made a left on Rogers Road. And the police
2 just swarmed us. I mean, that was it, and I'm just --

3 Q Did the police get you out of the car?

4 A Yes, sir.

5 Q Did they get him out the car first?

6 A Did they get who out of the first car?

7 Q Did they get the defendant out of the car first or the
8 driver out first?

9 A Yes, sir. I think he did step out first.

10 Q Okay. And he was the driver of the vehicle?

11 A Yes, sir, he was driving.

12 Q And after that did you talk to the police, after that?

13 A Yeah. We talked the night, that same night, because
14 they questioned me or whatever. I basically just got in
15 the wrong, I mean, I basically just caught the wrong ride.
16 I mean, that's all I can say.

17 I don't know about all of this, the robbery or
18 whatever was supposed to happen. I don't know nothing
19 about none of that. I just caught the wrong ride
20 basically. I don't know nothing about all of that robbery
21 or none of that.

22 Q And just to make sure. In 1997 you was convicted of
23 possession with intent to distribute marijuana, is that
24 right?

25 A Yes, sir, and crack.

Troy Berry
Cross-examination by Ms. Hodges

1 Q Thank you. Please answer any questions Ms. Hodges may
2 have of you.

3 CROSS-EXAMINATION

4 BY MS. HODGES

5 Q Mr. Berry, in addition to the possession with intent
6 to distribute marijuana and crack that you were convicted
7 of in 1997 you were also subsequently convicted in 1998 of
8 simple possession of crack cocaine, is that correct?

9 A That, that was the same incident. I just went. I
10 went down the road. I was already in S. C. D. C. I come
11 back to court. I had some pending charges. It's the same.
12 It's the same situation.

13 Q But so you were convicted on two different dates for
14 three different charges, is that correct?

15 A The incident happened at the same time.

16 Q I understand that.

17 A But I had a second charge that I got caught before I
18 got sentenced.

19 Q Right.

20 A But as me being incarcerated I was already
21 incarcerated and came back to court for another charge, but
22 it's -- yeah.

23 Q Right. And so basically you had three charges. And
24 you went to court on two different days for the three
25 charges, correct?

Troy Berry
Cross-examination by Ms. Hodges

1 A Yes, yes, ma'am.

2 Q Okay. And they were all drug charges, right?

3 A Yeah. But what this got to do with, with the case?

4 Q Okay. And you've actually known Mr. Lyles for longer,
5 a couple of days longer, than just that night, isn't that
6 true?

7 A Say what?

8 Q You've actually knowed him a couple of days longer
9 than just that night.

10 A Nah. I don't think him like that. I don't know him
11 like that. I don't even know -- I didn't know his name was
12 Noel until they come to the house. I don't know on first
13 name basis. I mean, we from the same area. I can't say I
14 ain't never seen him before, but I don't know him. We
15 ain't never hung together. That's the first time I ever
16 been in contact, in the car with him or anything, yes,
17 then.

18 Q Okay. So you asked this man for a ride to your
19 uncle's house in Duncan.

20 A Yes, ma'am.

21 Q So you can get money, right?

22 A To get -- I was going to pay him gas, yeah. I was
23 going to pay him gas money.

24 Q But you're also -- I mean, you basically you're asking
25 him to a ride to your uncle's house so you can get him some

Troy Berry
Cross-examination by Ms. Hodges

1 money. You're going to give him some gas money.

2 A Uh-huh.

3 Q From whatever your uncle was giving you, right?

4 A Yeah. I was going to pay him some gas money for
5 running me over there, yeah.

6 Q Okay. And this is somebody that you've never seen
7 before that you know of.

8 A I never -- I can't say I ain't never seen him. I
9 mean, we from the same area. I don't know him though. I
10 mean, I've seen a lot of people. I probably done seen one
11 of y'all, but I don't know you.

12 Q Okay.

13 A Yeah.

14 Q So you just ask one of us for a ride.

15 A Ask one of y'all for a ride?

16 Q Uh-huh.

17 A What you mean? I wasn't hitchhiking. He come to the
18 house where I was at. I wasn't hitchhiking. Yeah. If
19 you, if know you know the people's house I'm at, if you all
20 right with them and I'm all right with them, I know we all
21 right. So, I mean, you ain't no stranger. You came to
22 Fred's house. I was at the guy Fred's house. I mean, Fred
23 know him.

24 Q So you're okay with Fred. And you're assuming that
25 he's okay with Fred because at Fred's house and then --

Troy Berry
Cross-examination by Ms. Hodges

1 A Nah. He came to Fred's house. I was at Fred's house.
2 He come to Fred's house while I was already there.

3 Q All right.

4 A But basically --

5 Q Well, let me ask you a question.

6 A He mean, I know he, he ain't no stranger if he come to
7 Fred's house. Fred don't let anybody in his house, so, I
8 mean, I figured he's all right.

9 Q You don't?

10 A Not, don't just let anybody in his house. I mean, I
11 ain't never just let him, just somebody knock on the door,
12 hey, yeah, come on in. It's nothing like that, you know.

13 Q My question, Mr. Berry, is that because you're okay
14 with Fred and you know Fred and you're assuming that
15 because he's coming to Fred's house that he knows Fred and
16 therefore is okay --

17 A I mean, he did know Fred, I guess. I mean, Fred let
18 him in. They knowed each other.

19 Q Okay. And so therefore you're assuming that it's okay
20 to take a ride with him.

21 A Just for a ride. I mean, I ain't asked him to -- I
22 mean, I still ride. I mean, what is a ride? I mean, you
23 got people that hitchhike that ask for a ride. I mean,
24 that's nothing.

25 Q Okay.

J. D. Mathis
Direct examination by Mr. Gowdy

1 A I mean, if I was somewhere and needed a ride, I'd ask
2 you for ride if I really needed one.

3 Q Well, that's my question. You said you wouldn't do
4 that, didn't you?

5 A I said I -- would I? I said I wouldn't do what?

6 Q Thank you, Mr. Berry.

7 A Oh, man.

8 MR. BARNETTE: No further questions, Your Honor. We
9 ask this witness be excused.

10 MS. HODGES: No objection.

11 THE COURT: You may. You may step down.

12 (Whereupon, the witness was excused.)

13 MR. GOWDY: Your Honor, we would call Officer Mathis
14 with the Duncan police department and ask for a moment of
15 the court's indulgence to set up a fairly quick video.

16 THE COURT: Okay.

17 (Pause.)

18 J. D. MATHIS, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. GOWDY

21 Q Good afternoon, Deputy Mathis, Officer Mathis.

22 A Good afternoon, sir.

23 Q How long have you been in law enforcement?

24 A I've been in law enforcement four years.

25 Q And how much of that's been spent with the Duncan

J. D. Mathis
Direct examination by Mr. Gowdy

1 police department?

2 A Approximately two years.

3 Q Two years. March the 7th of 2009 were you working for
4 the Duncan police department?

5 A Yes, sir.

6 Q Are your cars equipped with in-car videos that you can
7 activate or perhaps even automatically turn on when you're
8 in the car?

9 A Yes, sir. They activate once I initiate my blue
10 lights.

11 Q All right. I want to show you what's been marked as
12 State's Exhibit No. 2 and ask you whether or not you have
13 had a chance to view an in-car video from your car on
14 March the 7th of 2009.

15 A Yes, sir.

16 Q Is the video that is contained on that disc, does it
17 fairly and accurately depict what happened on March the
18 7th?

19 A Yes, sir.

20 MR. GOWDY: Your Honor, we would move State's 2 into
21 evidence.

22 MS. HODGES: No objection, Your Honor.

23 THE COURT: It is admitted.

24 (Video marked State's Exhibit No. 2.)

25 MR. GOWDY: Permission to display.

J. D. Mathis
Direct examination by Mr. Gowdy

1 THE COURT: You may.

2 Q Let me ask you a couple of preliminary questions while
3 Deputy Barnette is doing that.

4 Do y'all ride in tandem in Duncan or are you single
5 officers?

6 A We're single officers.

7 Q All right. You were by yourself when you initiated
8 this car stop.

9 A Yes, sir. Sergeant Miller was directly behind me at
10 the time.

11 Q Okay. You were -- you had received -- I want you to
12 be -- I'm going to try to ask the question very precisely.
13 I want you to answer very precisely.

14 A Yes, sir.

15 Q You had received information or a BOLO to be on the
16 lookout for a certain truck, correct?

17 A Yes, sir.

18 Q You received a description of the truck, correct?

19 A Yes, sir.

20 Q And a partial license tag.

21 A Yes, sir.

22 Q All right. Officer Mathis, is this your car?

23 A Yes, sir.

24 Q And that is the truck that you stopped on March the
25 7th.

J. D. Mathis
Direct examination by Mr. Gowdy

1 A Yes, sir, yes, sir, that's correct.

2 Q All right.

3 (Whereupon, the C. D. was played for the jury.)

4 Q Did the driver identify himself?

5 A Yes, sir.

6 Q How did he identify himself, what name?

7 A Michael Lyles.

8 (Whereupon, the C. D. was played for the jury.)

9 Q Deputy, there is a second person who was just taken
10 out of the truck.

11 A Yes, sir.

12 Q Who was that?

13 A I do not recall his name, but it was the witness who
14 just testified.

15 Q The witness who testified immediately before you --

16 A Yes, sir.

17 Q -- was taken out of the passenger side.

18 A Yes, sir.

19 Q Officer Mathis, these are officers for what department
20 that have come out to the scene?

21 A It's numerous departments. Spartanburg County I
22 believe is here. Another officer from Wellford is there,
23 another officer from Duncan as well.

24 Q Are you familiar with Detective Jason Bryant who
25 testified this afternoon before you?

J. D. Mathis
Direct examination by Mr. Gowdy

- 1 A I believe he was at the scene as well, sir.
- 2 Q Okay. Would that be Detective Bryant --
- 3 A Yes, sir, it would.
- 4 Q -- searching the pockets?
- 5 A Yes, sir, it would.
- 6 Q Let me show you what's been marked as State's Exhibit
- 7 58 and ask you whether or not you recognize that picture.
- 8 A Yes, sir, I do.
- 9 Q Was it taken the night of March the 7th?
- 10 A Yes, sir, it was.
- 11 Q Is that the driver of the car?
- 12 A Yes, sir, it is.
- 13 MR. GOWDY: Your Honor, we would move State's 58 into
- 14 evidence.
- 15 MS. HODGES: Your Honor, we have no objection to 58.
- 16 THE COURT: It is admitted.
- 17 (Photograph marked State's Exhibit No. 58.)
- 18 Q Did you transport the defendant to the Spartanburg
- 19 County Sheriff's Department, or did the sheriff's
- 20 department do that?
- 21 A Sheriff's officer did it.
- 22 Q After you made the car stop did you have any other
- 23 interactions with this case?
- 24 A No, sir.
- 25 Q I want to show you what's been admitted as State's 58.

J. D. Mathis
Cross-examination by Ms. Hodges

1 Officer, is that a picture of the person who was driving
2 that Toyota Tacoma pickup truck on March the 7th of 2009
3 that you stopped?

4 A Yes, sir, it is.

5 Q That is a better picture of the person that you had
6 laid out in the road, turned to the left. That's the same
7 person.

8 A Yes, sir.

9 Q Please answer any questions the defense attorney may
10 have for you.

11 CROSS-EXAMINATION

12 BY MS. HODGES

13 Q Officer Mathis, how do you receive a, the
14 be-on-the-lookout, the BOLO? How do you receive that?

15 A We receive that from dispatch.

16 Q All right. Is it something that dispatch basically
17 calls out on the radio to you, or do you get in some sort
18 of written form, or how is it communicated to you by
19 dispatch?

20 A It's communicated all the way through dispatch calling
21 over the radio.

22 Q So basically dispatch will kind of they make --
23 usually they make some kind of sound or kind of signal and
24 then kinda of, you know, basically says, you know, here's
25 the following BOLO, you need to be on the lookout for, and

J. D. Mathis
Cross-examination by Ms. Hodges

1 then give the description of what they're asking you to be
2 on the lookout for, right?

3 A Yes, ma'am.

4 Q Okay. And in this case you actually indicated -- you
5 actually did a written incident report, is that correct?

6 A Yes, ma'am.

7 Q And do you have a copy of it there with you?

8 A I do.

9 Q All right. And you actually had -- were told that you
10 had -- the BOLO was given out for the vehicle that was
11 involved in an assault and battery of a high and aggravated
12 nature, isn't that right?

13 A That is correct.

14 Q And, in fact, the person -- you already had told the
15 person to be on the lookout for driving that truck was Noel
16 Michael Lyles.

17 A Correct.

18 Q And the tag number that you were given was 485 5AB.

19 A That is correct.

20 Q All right. That's not the tag number that we have
21 seen previously, is that correct?

22 A From what I understand in here, yes, ma'am.

23 Q Okay. So that basically is 485 5AB, is that correct?

24 A The one that was given to me, or is that correct?

25 Q Yes, sir, the one that was given to you.

J. D. Mathis
Cross-examination by Ms. Hodges

1 A Yes, ma'am.

2 Q Okay. The -- you indicated that Ms. Lyles was
3 transported by the sheriff's office. Was Mr. Berry also
4 taken into custody and transported by the sheriff's
5 department?

6 A I don't recall.

7 Q You don't recall whether he was taken into custody?

8 A No, ma'am. I did not have any contact with Mr. Berry.

9 Q Okay. So your -- all of your focus and attention was
10 just with Mr. Lyles.

11 A Correct.

12 Q Okay.

13 MS. HODGES: Beg the Court's indulgence for one
14 moment.

15 (Pause.)

16 Q At any point did you leave anybody in the vehicle,
17 either of the suspects in the vehicle, while y'all were
18 searching it or processing it?

19 A No, ma'am.

20 Q Okay. So both people were taken out of it.

21 A Yes, ma'am.

22 Q Okay. But you don't know whether Mr. Berry was
23 actually taken into custody or not.

24 A Mr. Berry was taken into custody by Sergeant Miller
25 after Mr. Lyles was thrown out on the ground.

John Nix
Direct examination by Mr. Barnette

1 Q Okay.

2 A And I had placed him in investigative detention at
3 that time.

4 Q Okay. Placed him, being Mr. Lyles, in investigative
5 detention.

6 A Correct. Mr. Lyles in investigative detention.

7 Q Okay. But Sergeant Miller was dealing with Mr. Berry.

8 A Correct.

9 Q All right. And you don't have any recollection as to
10 whether they were both taken off by the sheriff's office.

11 A I do not recall if they were taken off by the
12 sheriff's office. All I know is I did not transport them.

13 Q Thank you, sir.

14 MS. HODGES: That's all I have.

15 MR. GOWDY: Nothing on redirect, Your Honor.

16 THE COURT: You may step down.

17 MR. BARNETTE: Your Honor, the state would call John
18 Nix.

19 JOHN NIX, having been first
20 duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BARNETTE

22 Q If you would, sir, please give your full name for the
23 record, please.

24 A John Nix.

25 Q And where do you work at, sir?

John Nix
Direct examination by Mr. Barnette

- 1 A Spartanburg Sheriff's Office.
- 2 Q And what is your position there, sir?
- 3 A I'm an I. D. investigator.
- 4 Q Back on March the 7th of this year, 2009, was you
- 5 working that evening, sir?
- 6 A I was.
- 7 Q Was you called out to the scene to process a crime
- 8 scene or process a truck out there, sir?
- 9 A Yes, sir.
- 10 Q When you arrived out there -- let me show you what's
- 11 been marked as State's Exhibit 18, as well as State's
- 12 Exhibit No. 19. Do you recognize those items, sir?
- 13 A I do.
- 14 Q Is that the truck that you found there at the scene?
- 15 A It is.
- 16 Q And where was this scene at, sir?
- 17 A On Rogers Road just up from Pine.
- 18 Q What the officers just described earlier?
- 19 A Yes, sir.
- 20 Q Do those pictures fairly represent the truck you saw
- 21 there?
- 22 A Pardon?
- 23 Q Do these fairly represent what the truck -- that you
- 24 saw there?
- 25 A Yes, sir.

John Nix

Direct examination by Mr. Barnette

1 Q Did you take these pictures?

2 A I did.

3 MR. BARNETTE: Your Honor, I'd like to enter 18 and 19
4 if they are not evidence already.

5 THE COURT: They are not.

6 MS. HODGES: No objection, Your Honor.

7 THE COURT: They are admitted.

8 (Photographs marked State's Exhibits Nos. 18 and 19.)

9 MR. BARNETTE: May I publish them to the jury, Your
10 Honor?

11 THE COURT: You may.

12 Q Is this a picture of the truck that you found there at
13 the scene, sir?

14 A It is.

15 Q What kind of truck was that, sir, do you remember?

16 A I think it was a Toyota king cab.

17 Q Okay. And showing you State's Exhibit 19, was that
18 the license plate that was on the truck?

19 A Yes, sir, it is.

20 Q And did you process the inside of that truck, sir?

21 A I did.

22 Q Let me show you what's been marked as State's
23 Exhibit 20 and 23. I think 23 is into evidence. I don't
24 think 20 is yet. If you would, take a look at that, sir.
25 Do these pictures fairly represent what you saw inside of

John Nix
Direct examination by Mr. Barnette

1 the truck?

2 A Let me get some glasses here.

3 Q Yes, sir. Take your time.

4 A Yes, sir.

5 Q Let me show you what's been marked as 22 and 28. Was
6 those some additional things you found inside, sir?

7 A Yes, sir.

8 MR. BARNETTE: The Court's indulgence for one second,
9 Your Honor.

10 Q Let me show you 21 and 25. Do those pictures fairly
11 represent what you saw inside that truck, sir?

12 A They do.

13 Q Let me show you 29 and 30. Do they represent what you
14 saw in there that night too?

15 A Yes, sir, they do.

16 MR. BARNETTE: Your Honor, I'd like to move to have
17 these. I think some of these are already in evidence. But
18 I'd like to move them all into evidence if they're not in
19 at this time.

20 MS. HODGES: No objection, Your Honor.

21 THE COURT: All right. Give me those numbers again.

22 MR. BARNETTE: Your Honor, it's 29, 30, 21, 25, 22,
23 28, 20 and 23, Your Honor.

24 THE COURT: Any objection?

25 MS. HODGES: That's correct, Your Honor.

John Nix
Direct examination by Mr. Barnette

1 THE COURT: They are admitted.

2 (Photographs marked State's Exhibits Nos. 20, 21, 22,
3 23, 25, 28, 29 and 30.)

4 Q Let me show you State's Exhibit 28. Was that the
5 inside of the truck, sir?

6 A Yes, sir.

7 Q Let me show you what's State's Exhibit 29. Was that
8 what you found inside the truck too?

9 A Yes, sir.

10 Q And did you move it a little bit and take State's
11 Exhibit 30 so you could clearly see the two items?

12 A Yes, sir.

13 Q And the one item, the darker item in that, what is
14 that, sir?

15 A That's a Narco brand cell phone.

16 Q And what was this item right here, sir?

17 A Some sort of look liked a purse, brown leather purse.

18 Q Let me show you State's Exhibit 55. Was that the
19 phone you found, sir?

20 A It appears to be.

21 Q Let me show you what's been marked as State's Exhibit
22 54. Was that the purse that you found in this truck, sir?

23 A Yes, sir, it is.

24 MR. BARNETTE: Your Honor, I would like to move
25 State's Exhibit 55 and 54 into evidence at this time.

John Nix
Direct examination by Mr. Barnette

1 MS. HODGES: No objection, Your Honor.

2 THE COURT: They are admitted.

3 (Wallet marked State's Exhibit No. 54; mobile phone
4 marked State's Exhibit No. 55.)

5 Q So this is the phone that you found, sir?

6 A It is.

7 Q And then this is the State's Exhibit -- that was 55.
8 And State's Exhibit 54, that was the purse that you found
9 inside.

10 A It is.

11 Q Inside there, these are the two items that you found
12 inside the purse?

13 A That's correct.

14 Q And can you tell me, can you tell the jury what this
15 is, sir?

16 A That's a bottom half, I think, of a voter registration
17 registered to a Terry Lee Mathis.

18 Q Was there anything else inside the purse that you
19 could find other than those two items?

20 A No, sir.

21 Q Let me show you what's been marked as State's Exhibit
22 21. Can you tell us what that item was there, sir?

23 A That's a plain gold wedding band that was lying on the
24 floorboard of the truck just below the front edge of the
25 seat.

John Nix
Direct examination by Mr. Barnette

- 1 Q Let me show you State's Exhibit 22.
- 2 A That's just a closeup of the same thing.
- 3 Q And did you collect that ring, sir?
- 4 A I did.
- 5 Q And State's Exhibit 23, can you tell us what this is,
- 6 sir?
- 7 A That's a diamond solitaire, a ring that was further up
- 8 underneath the seat, a little bit past the edge out of
- 9 sight until you got down looking at it.
- 10 Q Okay. Did you collect that out of the truck also?
- 11 A I did.
- 12 Q Was these shown to Ms. Sandifer later?
- 13 A I did.
- 14 Q Did she I. D. those as her rings?
- 15 A She did.
- 16 Q Was those returned back to her that night?
- 17 A They were.
- 18 Q So they were never entered into evidence at that time.
- 19 A No, sir.
- 20 Q Because they was her items and they was returned back
- 21 to her.
- 22 A That's correct.
- 23 Q And you collected those two items.
- 24 A I did.
- 25 Q Did you also receive an iPod?

John Nix
Direct examination by Mr. Barnette

- 1 A I did.
- 2 Q I believe that's State's 31. Where did you take a
3 picture of that iPod at, sir?
- 4 A I took a picture of the iPod back in the forensics lab
5 at the sheriff's office.
- 6 Q Okay. Was it collected at the scene?
- 7 A It was.
- 8 Q And who collected and gave it to you, sir?
- 9 A Pardon me?
- 10 Q Who -- here it is. State's Exhibit 31, is that the
11 item that you received?
- 12 A Yes, sir, it is.
- 13 Q And was that -- who was that item collected from?
- 14 A It was actually collected from the patrol car after it
15 was removed from the defendant.
- 16 Q And who was the investigator that placed it on the car
17 for you?
- 18 A I'm not sure who exactly removed it from the
19 defendant, but Detective Williams is the one that indicated
20 to me to collect it.
- 21 Q And did you show this to Ms. Sandifer also?
- 22 A I did.
- 23 Q And was that her iPod?
- 24 A It was.
- 25 Q And was that returned back to her that night?

John Nix
Cross-examination by Ms. Hodges

1 A It was.

2 Q But you documented and took pictures of everything.

3 A Yes, sir.

4 Q Please answer any questions Ms. Hodges may have for
5 you. Thank you.

6 CROSS-EXAMINATION

7 BY MS. HODGES

8 Q Investigator Nix, the two rings that you photographed,
9 you actually saw those rings, photographed them and took
10 them out of the truck yourself, is that correct?

11 A I did.

12 Q And you turned them over to Ms. Sandifer.

13 A I did.

14 Q All right. But the cell phone and the purse or wallet
15 you chose to go ahead and enter into evidence.

16 A I did.

17 Q And you actually documented the purse and the wallet
18 and put them on an evidence sheet because you were turning
19 them into evidence, is that correct?

20 A That's correct.

21 Q But did you not do the same thing for either the two
22 rings or the iPod?

23 A No, I did not.

24 Q Okay. And you don't know who recovered the iPod. You
25 just know basically you were alerted to where, its

John Nix
Cross-examination by Ms. Hodges

- 1 location, by Investigator Williams.
- 2 A That's correct.
- 3 Q So you were not there when the iPod -- or you didn't
- 4 witness the iPod being found.
- 5 A That's correct.
- 6 Q Okay. And the way that the voter registration card
- 7 and the wallet and that other business card, the way we saw
- 8 them displayed, that actually is not the way that you found
- 9 them in the wallet.
- 10 A They are not.
- 11 Q Okay. They were actually kinda sort of tucked down
- 12 into it.
- 13 A That's correct.
- 14 Q Okay. You indicate that there -- in addition to the
- 15 cell phone and the lady's wallet and the wedding bands --
- 16 the wedding band and engagement ring and the iPod player --
- 17 there was nothing else that you collected as evidence.
- 18 A Not to my knowledge.
- 19 Q All right. And do the photographs that we have seen,
- 20 those are photographs that you took.
- 21 A That's correct.
- 22 Q And those photographs fairly represent what you saw
- 23 that night in that truck as you were processing it there on
- 24 the side of the road in Duncan.
- 25 A It does.

1 Q Okay. Thank you, sir.

2 MR. BARNETTE: No further questions, Your Honor. We'd
3 ask that he be excused.

4 THE COURT: You may step down.

5 (Whereupon, the witness was excused.)

6 THE COURT: Let me see y'all just a minute.

7 (Bench conference held off the record in the presence
8 of the jury but out of the hearing of the jury.)

9 THE COURT: Ladies and gentlemen, we are going to
10 recess for the afternoon.

11 I remind you of the caution I have previously given
12 you, and that is during the overnight recess don't discuss
13 the case with anybody.

14 I understand you go home and you might have a spouse
15 or a child or some friend that knows you have jury duty and
16 they want to know what you're doing. You just tell them
17 you can't talk about it.

18 When this case is over and you have reached a decision
19 you can talk about it as much or as little as you'd like to
20 as many or as few as you would like. But until you have
21 reached a decision you're not permitted to discuss this
22 case in any fashion whatsoever with any person whatsoever.

23 Also, as I've instructed you earlier, don't allow
24 yourselves to be exposed to any type of media coverage,
25 whether it be television or radio or newspaper. Simply

1 avoid it. Do not listen to it; do not watch it; do not
2 read it should there be some item or any matter relating to
3 the case.

4 And also do not conduct any research in any fashion or
5 do your own investigation in any way into any issue or
6 anything at all that relates to this case.

7 And with that I hope you do have a good evening, and
8 ask that you please report to your jury room at 9:30 in the
9 morning, 9:30 in the morning. Have a good evening.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: While we are waiting let me ask y'all to
13 gather up all of the exhibits and verify their existence
14 and turn them in to the clerk.

15 (Pause.)

16 THE COURT: Any matters we need to address before we
17 recess?

18 MR. GOWDY: No, sir, Your Honor.

19 MS. HODGES: None for the defense, Your Honor.

20 THE COURT: Court is in recess until 9:30 in the
21 morning.

22 Ms. Hodges, if you will, talk to Mr. Lyles about his
23 right to testify and not.

24 MS. HODGES: Yes, sir, I shall.

25 THE COURT: Okay.

1 MS. HODGES: I will inform the Court tomorrow whether
2 we have zero, one or two witnesses.

3 THE COURT: All right. Thank you.

4 END OF PROCEEDINGS NOVEMBER 12, 2009
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1 (Proceedings November 13, 2009)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Ms. Hodges, have you talked to
5 your client about his right to testify, as well as not
6 testify?

7 MS. HODGES: Yes, sir, Your Honor, I have.

8 THE COURT: Did you explain to him that the choice is
9 his and only he can make it?

10 MS. HODGES: That is correct, Your Honor. I did.

11 THE COURT: Have you explained to him the advantages
12 and disadvantages of testifying, as well as not testifying?

13 MS. HODGES: Yes, sir.

14 THE COURT: And does he appear to understand those
15 circumstances and facts?

16 MS. HODGES: Yes, sir, he does.

17 THE COURT: And has he indicated to you he has a
18 preference?

19 MS. HODGES: He has, Your Honor.

20 THE COURT: What has he indicated to you?

21 MS. HODGES: He tells me, Your Honor, that he chooses
22 not to testify.

23 THE COURT: And do you believe that that's a decision
24 that he's made of his own free will and accord?

25 MS. HODGES: Absolutely.

1 THE COURT: Do you concur in his decision?

2 MS. HODGES: Yes, sir I do.

3 THE COURT: Mr. Lyles, you've heard my discussion with
4 Ms. Hodges about your right to testify, as well as not
5 testify.

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: Do you understand that you do have a right
8 to testify if you wish to? Nobody can require it. It's
9 your decision to make.

10 THE DEFENDANT: Yes, sir, Your Honor.

11 THE COURT: And have you had plenty of time to reflect
12 upon your decision as to whether or not you will take the
13 witness stand and testify?

14 THE DEFENDANT: I have made a decision.

15 THE COURT: And you understand that once you make a
16 decision, once the case has been submitted to the jury,
17 that you can't change your mind about it? Now is the
18 chance for you to testify if you want to, but now is the
19 time that you have to make that decision also.

20 THE DEFENDANT: I made my decision, Your Honor.

21 THE COURT: And you have had plenty of time to discuss
22 it with your lawyers?

23 THE DEFENDANT: Yes.

24 THE COURT: And you have reached a decision?

25 THE DEFENDANT: Yes, I have.

1 THE COURT: And what is your decision?

2 THE DEFENDANT: That I will not testify.

3 THE COURT: And is that a decision that you have made
4 of your own free will and accord?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And you're satisfied with that decision?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Do you have any other witnesses you want
9 your lawyers to call?

10 THE DEFENDANT: None at this moment.

11 THE COURT: Okay. Thank you.

12 All right. Any requests for instructions by the
13 state?

14 MR. GOWDY: No, sir, Your Honor.

15 THE COURT: By the defendant?

16 MS. HODGES: Your Honor, we would request a lesser
17 included instruction, or an instruction on lesser included
18 offense rather, of strong arm robbery, as well as assault
19 and battery.

20 THE COURT: All right. Any objections from the state?

21 MR. GOWDY: No, sir, Your Honor.

22 THE COURT: All right. The jury will be instructed on
23 kidnapping, armed robbery, common law robbery and
24 aggravated assault and battery, simple assault and battery,
25 and grand larceny.

1 MS. HODGES: Yes, sir.

2 THE COURT: Okay. Any other matters we need to
3 address?

4 MS. HODGES: Just a moment, Your Honor.

5 Your Honor, we would make a motion for a directed
6 verdict once the state rests. My understanding is the
7 state intends to rest.

8 THE COURT: Well, let's go ahead and do that. They're
9 going to rest. I understand they don't have any other
10 witnesses.

11 Is that true?

12 MR. GOWDY: Yes, sir.

13 THE COURT: Okay.

14 MS. HODGES: Your Honor, at this time we would make a
15 motion for a directed verdict on the basis that given the
16 evidence and testimony that has been presented thus far to
17 the jury, it's not sufficient for a verdict to be rendered
18 on the charges that Mr. Lyles has been brought to trial
19 for.

20 THE COURT: And where do you perceive there is a lack
21 of evidence?

22 MS. HODGES: Your Honor, we perceive that there is a
23 lack of evidence regarding the beer bottle as a deadly
24 weapon, to be able to, to be able to have a verdict as to
25 the fact that the beer bottle, just from the nature of it,

1 as a deadly weapon, or the actual use of the beer bottle in
2 terms of inflicting either serious bodily injury, the
3 ABHAN.

4 There's no evidence in terms of great disparity, of
5 physical conditions between Ms. Sandifer and Mr. Lyles.

6 We would argue that the state has failed to produce
7 sufficient evidence as to the kidnapping in terms of any
8 evidence that corroborates the claim that there was a
9 dragging that occurred that the state claims is the basis
10 of the kidnapping.

11 As to the grand larceny, Your Honor, we would argue
12 there has been insufficient evidence in terms of
13 identifying based on the clothing description that was
14 described that day, as well as the clothing description
15 that was seen that evening, to identify Mr. Lyles as the
16 person that actually stole, stole the 1998 Toyota Tacoma.

17 THE COURT: All right. Well, clearly those points
18 might be contested, and it might be argued differently.
19 But there is sufficient evidence in the record from which a
20 jury could reasonably find each of the essential elements
21 of the crimes charged against the defendant if they believe
22 it to be credible; and therefore your motion for a directed
23 verdict on those grounds is denied.

24 MS. HODGES: Thank you, Your Honor.

25 THE COURT: Any others?

1 MS. HODGES: We have no other motions.

2 THE COURT: All right. Are y'all ready to proceed?

3 MR. GOWDY: Yes, sir, Your Honor.

4 THE COURT: All right. Bring the jury in, please,
5 sir.

6 (The following takes place in the presence of the
7 jury.)

8 THE COURT: Good morning, ladies and gentlemen.

9 As you know, yesterday when we recessed the state had
10 been in the midst of their presentation of evidence. So
11 we'll continue with that this morning.

12 Solicitor.

13 MR. GOWDY: May it please the Court, Your Honor. The
14 state rests.

15 THE COURT: All right. That's all of the testimony or
16 other evidence to be offered by the state, at least in
17 their case in chief. So we'll proceed with any to be
18 offered by the defense.

19 Ms. Hodges.

20 MS. HODGES: Thank you, Your Honor. On behalf of Mr.
21 Lyles the defense rests.

22 THE COURT: All right. Ladies and gentlemen, that is
23 all of the testimony or other evidence to be offered in the
24 trial of the case; and therefore what remains to be done
25 are the lawyers' final summations, after which I'll

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1 instruct you on the law that's applicable in the case. And
2 then you'll be asked to go back and begin with your
3 deliberations.

4 So please give the lawyers your attention now as they
5 give you their final summations.

6 MR. GOWDY: May it please the Court, Your Honor.

7 THE COURT: Yes, sir.

8 MR. GOWDY: Madam Forelady and ladies and gentlemen of
9 the jury, this will be the last time anyone from the State
10 of South Carolina addresses you. So let me start by
11 thanking you for your service.

12 This has been an unusual week to be qualified on
13 Monday and have a holiday in the middle of the week. And
14 then to be here on a Friday is unusual. So we thank you
15 for your service.

16 You are judges. You are judges of the facts. Judge
17 Cole is the judge of law. And in just a minute he will
18 give you the law. But make no mistake about it. You are
19 judges too. You didn't have on a black robe. This may be
20 the only time you're ever in a courtroom. But you are
21 judges with respect to this case. And you, and you alone,
22 will decide the facts.

23 And at first blush that may seem like a daunting task.
24 How do we separate the truth from what is not truth? How
25 do we separate fact from fiction?

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1 It may seem like a daunting task, but, ladies and
2 gentlemen, in your everyday lives as coworkers, as spouses,
3 as friends, as parents, as children you make very important
4 decisions. You don't have a judge in the courtroom.
5 There's no D. A. that's talking to you.

6 You just use your common sense to separate what is
7 true from what is not true, what has the ring of truth from
8 what does not have the ring of truth.

9 The same common sense that guides you and carries you
10 through your everyday decision-making process will serve
11 you well when you retire to your jury room and deliberate
12 this case.

13 Ladies and gentlemen, Karen Mathis was simply washing
14 a truck. It's broad daylight, it's broad daylight. And,
15 you know, sometimes, sometimes we have a tendency to want
16 to ignore the obvious and pursue the obtuse.

17 It's almost like we can't get our arms around the fact
18 that people really can steal a truck in broad daylight or
19 really can attack a stranger. We ignore the obvious or the
20 crystal clear and we look for some explanation or some
21 meaning, some subplot.

22 And I submit to you, ladies and gentlemen, sometimes
23 things are exactly as they seem. They're just as clear and
24 just as straightforward as they seem.

25 Karen Mathis just washing her car, told you she had

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1 never seen this defendant before, washing her truck with
2 her 83-year-old grandma at a Lyman car wash.

3 And the defendant begins to weave in and out of the
4 bays. You see the surveillance video. And I'm not going
5 to represent to you for a second that that surveillance
6 video is clear enough for you to make out the identify of
7 the person.

8 But I will tell you this. Karen Mathis was close
9 enough. And even Tanesha Ballenger described him to a tee,
10 described that man to a tee. And you saw the video,
11 walking in and out of the bays, would go up to Ms. Mathis
12 and would walk around.

13 I think the word lurking was used, would lurk about
14 for about 20 minutes. And then finally the last time he
15 came to the bay he jumps in the car. And you see this lady
16 right here chasing behind the truck, someone who is not the
17 owner, that has no business being inside the truck and has
18 no right to the truck has decided that he's just going to
19 take because he can take it from a little old lady.

20 And while Ms. Mathis was testifying, it was just one
21 sentence. There was just one sentence, but I know you will
22 remember it.

23 She said a very kind, good samaritan, a lady, found
24 her stuff and called and said I found your cell phone
25 inside of your room. And I said, Ms. Mathis, did she give

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1 some indication of where your stuff was found. And do you
2 remember the name of the road that she gave? It's just a
3 simple answer -- Rainbow Lake Road -- which takes us to Amy
4 Sandifer because that is exactly where that crime happened.

5 Amy Sandifer is going for her daily routine exercise
6 walk armed with nothing but an iPod, an engagement ring and
7 her wedding band. And a burgundy truck, the same burgundy
8 truck that was stolen from her, the same license tag off by
9 one single digit -- that's pretty good, ladies and
10 gentlemen. After having just been assaulted and drug, to
11 be within one digit of being right on a license tag number
12 is pretty doggone good.

13 This burgundy truck drives past Amy Sandifer, and then
14 it turns around and comes back and asks for roads that
15 don't exist. And then out walks the defendant with a
16 bottle of beer. And he spews forth some vulgarities, and
17 he demands this and demands that. And she says no
18 initially. And then she's drug. And we're going to talk
19 about the law in a minute. But you saw the mark on her
20 neck. She's drug.

21 And then finally when she's confronted with being drug
22 further to the woods or giving up her wedding band and her
23 engagement ring, she relents. After she's been hit with a
24 fist and a beer bottle twice she relents.

25 But you know what, ladies and gentlemen? I'm not even

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1 asking you to take her word for it. I'm not asking you to
2 take Amy Sandifer's word for it. You should.

3 I am asking you to think back to an engaged couple who
4 now are married, who came, one right after the other, and
5 sat right there. They've got no connection to law
6 enforcement. They don't work for the sheriff's department.
7 They don't know Ms. Sandifer. They don't know Tom
8 Sandifer. They don't know Michael Noel Lyles.

9 And what did they tell you? What did Ashley Dile
10 White and Charles White tell you sitting right here?
11 That's the man they saw. Michael Noel Lyles is the person
12 they saw standing over Amy Sandifer.

13 And then he says, "Go the F on," and they say is
14 everything okay. "Go the F on." And out of their rearview
15 mirror do you remember what Ashley Dile White, who has no
16 connection whatsoever to anyone sitting on this side of the
17 courtroom, not one, do you remember what she said she saw
18 in the rearview mirror? This man holding a beer bottle
19 like a club hitting her in the head.

20 That's not a police officer telling you that; that's
21 not a prosecutor telling you that. That's just an average
22 citizen telling you that.

23 And then her husband admits to you the weakness of
24 human nature. He should have gotten involved. He should
25 have stopped. They could see on the look on her face that

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1 she needed help. And they didn't.

2 But he remembers that his wife said just hit her with
3 a beer bottle. And finally the lady, not the man but the
4 lady, decides she's going to go get involved. So they
5 start driving back up there. But by that time Michael Noel
6 Lyles is gone in Karen Mathis' truck again. And Amy
7 Sandifer is walking towards her car.

8 And 9-1-1 dispatch is on the phone, and she gives the
9 license tag number. And it is strikingly similar to the
10 license tag on Karen Mathis' truck. She's without her
11 ring; she's without her iPod.

12 And then we fast forward about four hours to the
13 little town of Duncan. We've gone from Lyman to
14 Campobello, and now we're in Duncan where two Duncan police
15 officers that were just on uniform patrol, just routine
16 patrol, but they have received a BOLO to be on the lookout
17 for a burgundy Toyota Tacoma with this license tag number,
18 and they see it.

19 And out of the driver's side -- if you -- don't take
20 my word for it. You saw the video. You saw the in-car
21 video.

22 He gets out of the driver's side. He's patted down by
23 Jason Bryant. And if you want to look at the video again,
24 you'll see Jason Bryant take something out of his pocket
25 and then put it back in his pocket. And that was the iPod.

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1 He's driving her truck. He's got the iPod in his
2 front pocket, and then with I. D. Officer Nix begins to
3 process the truck.

4 We find a wedding band and engagement ring, which
5 brings me to the last witness I want to talk to you about.
6 He was not happy to be here. And anyone who tells you that
7 he is part and parcel of law enforcement, that he is
8 somehow involved in a conspiracy with Tom Sandifer, has
9 lost their mind.

10 Troy Berry came yesterday afternoon. He was not happy
11 to be here. When he was being asked about his drug record
12 you may remember he asked madam defense attorney what
13 difference does that make, what does that have to do with
14 anything. You remember what he told you. He has no stake
15 in the outcome of this case whatsoever. He's not a cop;
16 he's not a prosecutor.

17 What did he tell you? That Michael Noel Lyles shows
18 up at a friend's house and is trying to sell some jewelry.
19 In fact, the second time he was asked, he said I think it
20 might have been a couple of rings. He's gotten out of the
21 car, and he's dealt with by law enforcement while he's
22 arrested.

23 Ladies and gentlemen, the facts are clear. Now, I
24 want us to talk about the charges -- grand larceny, grand
25 larceny. Let me tell you the difference between.

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1 Larceny is stealing. It's just a legal word for
2 stealing. If I go in the shed outside of your house or I
3 go in your carport and I take your lawnmower, that's
4 stealing. That's a larceny. And depending on the value of
5 what I take, it's either petty larceny or grand larceny.

6 And because Ms. Mathis' truck was worth more than
7 \$5,000, which you know because one of Sharron West's
8 employees came and told you it was worth \$5,500, that's
9 grand larceny. He took it. It's worth more than \$5,000.
10 Charge proven. Defendant did it. Grand larceny. Done.

11 Then we move to assault and battery of a high and
12 aggravated nature. I want you to listen to what Judge Cole
13 tells you. And to the extent that I tell you anything
14 different from what Judge Cole tells you, ignore what I
15 tell you and go with what he tells you. He's the judge of
16 the law.

17 But you have an assault and you have a battery and you
18 have circumstances of aggravation, whether it's the
19 disparity in sex, the disparity in size, the fact that a
20 weapon was used, the fact that there were injuries, this is
21 more than a simple assault-and-battery school-yard fight.

22 This is assault and battery of a high and aggravated
23 nature while he -- I want you to get this image in your
24 mind of this defendant standing over that lady alongside a
25 road. He's armed with a beer bottle. And you tell me

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1 that's simple assault and battery? That's assault and
2 battery of a high and aggravated nature.

3 Now I want to move to kidnapping, ladies and
4 gentlemen. I watch television; I go to movies; I've read a
5 book or two.

6 Kidnapping. What we think of is Bruno Hauptmann
7 kidnapping Charles Lindbergh's baby, climbing up a ladder
8 and taking a child out of a second-story window and holding
9 that child for ransom. Or we think of the, the young woman
10 in Utah, Elizabeth Smart, who was taken out of her home and
11 held by a crazy man until finally she's rescued. That's
12 what we think about in theater, in movies about kidnapping.

13 I want you to listen to the law of the State of South
14 Carolina with respect to kidnapping. Forget what the
15 movies say.

16 Listen to what Judge Cole tells you the law is -- when
17 you seize someone, when you restrict someone's freedom for
18 however long. So when you're dragging someone and you have
19 seized them and your hands are on their hands and their
20 freedom has been restricted and they don't have the freedom
21 to exercise movement, under South Carolina law, ladies and
22 gentlemen, that is kidnapping, whether any of you thought
23 it was or not on Monday morning when you came to be
24 qualified for this jury.

25 Under South Carolina law when you lay hands on someone

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1 and you seize them and you restrict their freedom for
2 however long, that is kidnapping.

3 Now, I want us to move to armed robbery. We know the
4 rings were taken; we know the iPod was taken. And in
5 reality, ladies and gentlemen, we know he did it because
6 everyone who possibly had a chance to identify him did
7 identify him either by circling his picture, initialing it,
8 or just the picture, just the still shot from Duncan.
9 Michael Noel Lyles did all of this. The question is is
10 this armed robbery.

11 Now, I want you to think back to Lyman. You now know
12 what larceny is. Larceny is taking someone's truck. He
13 didn't threaten her; he didn't even hit her. Right? He
14 didn't threaten her; he didn't strike her. He wasn't armed
15 with a weapon. That's why it's larceny.

16 Then from larceny you go up to what the law calls
17 strong arm robbery or common-law robbery. Just think about
18 the term for a second, strong arm robbery. Strong arm
19 robbery is when I come up and either because of my size or
20 my voice or because of some threat I make to you, I take
21 what's yours as mine.

22 I rob you, but I'm not armed. I just, I intimidate
23 you, and I make you give me something that belongs to you.
24 And I intend to permanently deprive you of it. I'm not
25 armed. But I take it from you. I don't take it from your

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1 garage. I don't take it from your carport. I take it from
2 your person. That's strong arm robbery.

3 Armed robbery is when you have something in your hand
4 that is capable of either causing death or serious bodily
5 injury. And you use that. You don't even have to use it
6 for it to be armed robbery. If this were a glass bottle
7 and I held it like that and said give me your stuff, I
8 haven't used it, but I have threatened to use it.

9 This is plastic. I want you to imagine twice this
10 size and made out of glass. And I hold it like this, like
11 a club, which is what every witness told you he held it
12 like.

13 And not only do I hold it, I hit you with it. I hit
14 you in the arm and I hit you in the head. And you don't
15 have to take her word for it. Take the girl who came
16 yesterday who has no connection with this case. She's not
17 even here today. She told you she saw him holding this and
18 striking her in the head with a beer bottle.

19 So the question you have to decide is whether or not a
20 40-ounce, almost full, glass bottle of beer can hurt
21 somebody. Because if you say no, then that's just strong
22 arm robbery. That's the same as me saying -- and it
23 doesn't matter that he had this and it doesn't matter that
24 he used it.

25 He was armed. It wasn't a plastic bottle. It was

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1 hard. It breaks, it hurts and injuries. And right or
2 wrong circumstances, it can do more than that. This isn't
3 larceny; it's not strong arm robbery. It's armed robbery.

4 Ladies and gentlemen, you're going to have evidence
5 back there with you. You look at it if you want. If you
6 don't, you don't look at it.

7 This is the surveillance tape from the Lyman Car Wash.
8 I am not going to suggest for a minute that you can make
9 out who is on the video. You can't. All you can see is
10 somebody walking in and out and then a car taking off and
11 that poor little old lady right there chasing after it.
12 That's the surveillance video.

13 That's the lineup that that poor old lady looked at,
14 and that's who she picked, that guy. That's the lineup.
15 And as you remember, this lady gets the call.

16 And then we move up in our chronology. Rainbow Lake
17 Road is where her things were found. That was the truck
18 Karen Mathis identified, and Amy Sandifer. And I think
19 it's phenomenal that somebody came that close after being
20 assaulted on a license tag.

21 Some people want to criticize her for being off a
22 digit, a five and an eight. I don't know. You just had
23 your head hit with a glass bottle of beer. That's for you
24 to decide whether or not that's close enough.

25 There's the iPod. It's a better picture of the

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1 license tag. Ladies and gentlemen, you look at what you
2 want to look at. You don't look at what you don't want to
3 look at.

4 There's the wedding band. You remember Amy Sandifer
5 told you that it had to be cut off during one of her
6 pregnancies so there's a soldering mark as if a lady
7 wouldn't be able to tell her own wedding band anyway. It's
8 got a distinctive mark on it. The rings found in that
9 truck in Duncan were Amy Sandifer's rings.

10 There's a bruise on her arm. She told you that you
11 couldn't see through the hair at what happened at her head,
12 but you can surely see that's too big to be a fist. That's
13 a bottle.

14 There's Karen Mathis' cell phone and her wallet.
15 That's in her truck when he was arrested. And that's who
16 Amy Sandifer picked out within a couple of hours of being
17 asked who assaulted you, within a couple of hours of giving
18 almost exactly this license tag number. She circles the
19 picture of Michael Noel Lyles. And then right after that
20 Michael Noel Lyles is found driving the truck that has that
21 in it.

22 And here is the in-car video from Duncan, ladies and
23 gentlemen. And that's a still photograph of the person
24 that was driving Karen Mathis' car. That's a still
25 photograph of the person who was driving the truck that had

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1 two rings in it. That's a still photograph of the person
2 who was driving Troy Berry after he had offered to sell
3 Troy Berry two rings. That's a still photograph of the
4 person that Ashley Dile White and Charles White told you
5 they saw standing over Amy Sandifer. And he said, "Go the
6 F on."

7 And they look in the rearview mirror. And this is the
8 still photograph of the person that they say struck her in
9 the head with a beer bottle that he was holding like a
10 club.

11 Ladies and gentlemen, when the defense attorney gets
12 through talking to you you're going to go back to your jury
13 room. And you are going to have the indictments with you
14 and you are going to be asked to return a verdict.

15 Verdict is a good strong Latin word. It means to
16 speak the truth -- veredicto, to speak the truth.

17 When you come back into this courtroom with your
18 verdict I'm going to ask you for justice, and I'm going to
19 ask you for justice for Karen Mathis and Amy Sandifer and
20 ask you for justice on all four of the charges and ask you
21 to use your common sense.

22 Do the right thing. Hold him accountable for what he
23 did. I am not asking you to punish him. I'm just saying
24 hold him accountable for what he did.

25 THE COURT: Ms. Hodges.

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1 MS. HODGES: Thank you, Your Honor.

2 Good morning. The state has given you details and
3 evidence and facts of events that occurred on March the
4 7th of 2009 over the course of approximately 12 hours,
5 about 11 hours, on that day.

6 And as a result of those facts and the evidence and
7 testimony, pictures, video, that they have woven together
8 for you a story that they tell you convicts my client,
9 Noel, not Noell, Noel Michael Lyles.

10 They claim that he's guilty of armed robbery,
11 kidnapping, assault and battery of a high and aggravated
12 nature and grand larceny.

13 I submit to you, ladies and gentlemen, that while a
14 theft occurred at the Lyman Car Wash they have failed to
15 produce a sufficient amount of evidence to prove to you
16 beyond a reasonable doubt that Mr. Lyles committed that
17 crime.

18 I submit to you, ladies and gentlemen, they have not
19 proved assault and battery of a high and aggravated nature;
20 they have not proved kidnapping; and that they have not
21 proved armed robbery. And over the course of the next few
22 minutes we're going to talk about why they haven't proved
23 that.

24 In addition to the actual crimes charged and the
25 ~~definition of those crimes and what the elements of those~~

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1 crimes are, and remember we talked about elements, and
2 elements are essentially each crime in the State of South
3 Carolina has an element that has to be proven by the state
4 beyond a reasonable doubt.

5 In addition to that section of the law the judge is
6 also going to charge you about other things that you can
7 consider in making your decision, and one of those things
8 is the credibility of witnesses.

9 I submit to you, ladies and gentlemen, that not only
10 is it the credibility of witnesses that you have to
11 consider in this case, but there's also the credibility of
12 the investigations conducted in this case, because the case
13 is only as strong as its investigation. It is only as
14 strong as the effort, questioning, challenging that a
15 police officer does in the investigation.

16 There is a rush to judgment in this case, ladies and
17 gentlemen. There's a rush to judgment in this case. And
18 we are going to talk about why that rush to judgment
19 dictates against you finding Mr. Lyles guilty of the
20 offenses charged.

21 In this particular case, ladies and gentlemen, we have
22 a situation where the witnesses have to be examined and
23 their testimony has to be examined in the background
24 against what is their bias, their motive for testifying if
25 there's any sort of motive, what is their opportunity to

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1 observe the events they testified about.

2 The investigation -- what kind of rings true to me in
3 this case, and it's up to you to decide whether that's an
4 issue or not, ladies and gentlemen, but one of the things
5 that casts doubt on this case is the different treatment of
6 the victims in this case.

7 We do not have the rings and the iPod in the courtroom
8 today to look at. We have Ms. Mathis' cell phone. That's
9 State's Exhibit No. 55. We have her cell phone. We have
10 State's Exhibit No. 54, variously called a purse or a
11 wallet. We have that.

12 We know from the testimony that these two items were
13 found in the truck. Not only do we see the pictures of it,
14 but we have testimony about the fact that it was actually
15 recovered and entered into evidence. And how do we know
16 that it was recovered and entered into evidence? Because
17 we have them, we have them here, right here. We can touch
18 them; we can see them; we can rifle through them. We have
19 them, and we know they are here.

20 The only wedding ring you have been shown, ladies and
21 gentlemen, is the solicitor's. We haven't seen an
22 engagement ring, haven't seen an iPod.

23 We have pictures of them. We have pictures of an iPod
24 with over-the-ear headphones that apparently was taken at
25 the forensics lab at the Spartanburg County Sheriff's

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1 Office.

2 At no point do you see on that video from the Duncan
3 police department Jason Bryant take this iPod out of
4 Mr. Lyles' hands. You see Jason Bryant stick his hand in
5 the pocket of his pants. You see him kind of pull his hand
6 out of the pants and put his hand back in the pants. You
7 do not see this iPod on that video.

8 Do not let the state testify about what the evidence
9 shows. The evidence is what the evidence is. Hold them to
10 their burden to prove to you that this iPod was in
11 Mr. Lyles' hands.

12 We have photographs of a ring, a wedding ring, appears
13 to be a wedding band, State's Exhibit No. 22. It's a
14 closeup photograph of it on what appears to be carpet. And
15 the testimony is that it's found in the truck that was
16 stopped in Duncan.

17 We have a photograph of a ring, State's Exhibit
18 No. 24, that appears to be a marquee diamond engagement
19 ring. Again, it looks like it's on the carpet of a truck,
20 or carpeting. And we are told that it was found in the
21 truck.

22 Those two rings and the iPod were never entered into
23 evidence, never. The iPod wasn't even photographed on the
24 scene where it supposedly was found. There is some
25 confusion about how the two experienced investigators were

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1 going to handle the physical evidence in this case.

2 They testified that there should have been a property
3 receipt for those rings and for the iPod if they were found
4 and processed into evidence. The state never produced that
5 to you. They had every opportunity to be able to do that.
6 They chose not to do that. They chose not to do that
7 because they couldn't do that because it wasn't handled
8 properly.

9 We assume that there's a soldering mark on this
10 wedding ring, but we can't see it. It was never
11 documented. If there is a distinctive mark on a piece of
12 evidence, law enforcement had the ability to investigate,
13 to document, to be able to prove the case to you beyond a
14 reasonable doubt.

15 And it's cumulative, ladies and gentlemen. Maybe you
16 don't find that the state's not met their burden because of
17 a couple of things, but each and every doubt that there is
18 is cumulative and rises to the level of reasonable doubt, I
19 submit to you.

20 Charles and Ashley White didn't have anything to do
21 with this case, didn't have a dog in the fight, didn't have
22 an ax to grind, didn't have whatever phrase you want to
23 use.

24 They're driving by. They saw somebody that they
25 thought was in trouble, maybe needed help. They turned

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1 around and they came back. Somebody who is unwilling to
2 talk to the good samaritans that they were told them no,
3 no, don't need you, my husband's a cop. Cusses them out.

4 Now, I didn't think that the testimony -- and that's
5 up to you to determine whether the testimony of Charles
6 White was a little curious sometimes at that point. You
7 know, what he says, he says, well, you know, she just had
8 been robbed, so it was natural for her to cuss me out.

9 Well, she had a cell phone, something that she did not
10 have. He had a link to dispatch, to 9-1-1, something she
11 did not have, had the ability to get her help immediately.
12 No, no. I'll just continue walking to my car, go home, get
13 my husband, get into a car and drive around and look for
14 this person after this allegedly brutal attack. Doesn't
15 need an ambulance, doesn't drive straight to the hospital.
16 Goes home and gets into a car.

17 Now, when we try and find out what car is actually
18 used to go look for this suspect, all of a sudden we're
19 fuzzy on the details.

20 We can remember and testify distinctly about a bottle
21 being held as a club, the only person that testified a
22 bottle is held as a club for the entire incident. We can
23 testify about that. We can testify with clarity and detail
24 as to what happened in the physical dragging that's
25 alleged.

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1 We can testify with clarity and detail as to the shirt
2 that we wear and the other son's shirt that we bring to the
3 hospital with us. We can testify with clarity and detail
4 as to the timing of when we're showing the suspect
5 physically at the sheriff's office in the criminal
6 investigative division, but yet when asked which car did
7 you go out in, I don't remember that. Is that reasonable
8 doubt?

9 They took their investigation into their own hands.
10 She asked her husband to see the suspect. Take me to him,
11 I want to see him.

12 How did she know that the suspect was at the sheriff's
13 office? How did the husband know that the suspect was at
14 the sheriff's office? How did they know that he was in the
15 interrogation room that he was in? Why weren't they
16 escorted in and out like other victims?

17 The argument was made to you, ladies and gentlemen,
18 that everyone who possibly could have I. D.'d Mr. Lyles as
19 the perpetrator of these crimes did so. Hold them not only
20 to their burden, but hold them to what the evidence
21 actually was, ladies and gentlemen.

22 Not everybody that could have I. D.'d Mr. Lyles did.
23 Charles White was never shown a lineup; Ashley Dile, now
24 Ashley Dile White, was never shown a lineup; Tanesha
25 Ballenger was never shown a lineup. Not everybody that

Closing arguments

1 could have I. D.'d Mr. Lyles did.

2 The claim that Troy Berry has no stake in the outcome
3 of this case and has no bias in his testimony, ladies and
4 gentlemen, is just incredible. Troy Berry, like Mr. Lyles,
5 was found by the Duncan police department in a stolen
6 vehicle that had stolen jewelry in it. Yet Troy Berry was
7 sitting in the passenger side. But the claim that somebody
8 who is an admitted drug dealer has no stake in the outcome
9 of this case, ladies and gentlemen, is incredible.

10 Let's talk about the actual crimes or the charge.
11 You're going to have -- the judge, as I told you, will give
12 you the elements of the crimes.

13 The thing that distinguishes armed robbery from strong
14 arm robbery is the actual use of a deadly weapon. It could
15 be a pistol; it could be a slingshot; it could be a knife;
16 it could be any other object that's likely to produce some
17 sort of injury. But you also have to reasonably believe,
18 the victim has to reasonably believe, that they're going to
19 receive that injury, ladies and gentlemen.

20 You have conflicts in your testimony as to how that
21 beer bottle was being wielded. One person says it's being
22 used as a club and another person says he's just holding it
23 just like a beer bottle. No beer bottle was ever found.
24 We have the ring; we have the iPod. No allegation this
25 beer bottle was ever broken.

Closing arguments

1 We have nothing from the actual crime scene of the
2 armed robbery, ladies and gentlemen. No physical evidence,
3 no pictures, nothing from that crime scene in and of
4 itself.

5 The credibility of the beer bottle being held the
6 entire time the way that it was alleged, ladies and
7 gentlemen, is also subject to scrutiny.

8 You have an allegation that somebody is holding this
9 beer bottle as a club the entire time while supposedly
10 crouching over somebody, trying to pull rings off, grabbing
11 and dragging.

12 One of the things that you have to consider, ladies
13 and gentlemen, in the ABHAN charge is whether the state has
14 proven the -- or the aggravating circumstance alleged of
15 great disparity on the physical conditions between the two
16 parties, between Mr. Lyles and Ms. Sandifer.

17 You've seen both of them in the courtroom. You had an
18 opportunity to observe them. Is that man going to be able
19 to grab that woman just with one hand and actually drag her
20 ten to 15 feet as alleged when nobody else sees that
21 dragging happening, all the time holding a beer bottle as a
22 weapon? I submit to you, ladies and gentlemen, it's just
23 not possible because it's just not worthy.

24 There is no corroboration of the claims that
25 Ms. Sandifer was dragged into the woods or towards the

Closing arguments

1 woods. We don't have any crime scene photos. You don't
2 have anything that shows them. We know that the I. D. team
3 showed up there. There is testimony the I. D. was called
4 out and they showed up there.

5 We don't even have a photo of the crime scene. We
6 don't have a surface in the grass; we don't have drag
7 marks; we don't have disturbance in debris; we don't have a
8 disturbance in leaves or sticks or twigs.

9 A shirt supposedly was taken into evidence at the
10 hospital. Where is it? We didn't see it. There is no
11 evidence there are any tears in that shirt, that there's
12 any debris on that shirt, that there's any dirt on that
13 shirt.

14 She was dragged on her back with the shirt around her
15 neck, but what did y'all hear? No evidence. There's no
16 injuries on her back, on her legs. She's supposedly
17 wearing shorts and t-shirt. No scrape marks, no abrasions,
18 no scratches, no debris.

19 There are no injuries documented or alleged or claimed
20 on Mr. Lyles to indicate that a struggle actually happened.
21 You have somebody who is wielding a beer bottle as a club,
22 grabbing you by the back of your shirt and pulling you, and
23 you're not scratching at him, clawing, biting, physically
24 resisting. No injuries on Mr. Lyles whatsoever. No other
25 witness sees this dragging happen.

Closing arguments

1 Ladies and gentlemen, the state tells you to listen to
2 the law, but they also tell you that the basis of the
3 kidnapping is the dragging. The state has failed to meet
4 their burden in that case, ladies and gentlemen.

5 The solicitor wanted to argue to you about hands on
6 hands, when you put your hands on, hands on somebody.
7 Well, there's no evidence that you had hands on hands,
8 remember because you can't have both hands on hands because
9 you've got a beer bottle using it as a club.

10 You've got to make a choice. What are the facts?
11 What is the evidence? And stick with it.

12 Assault and battery of a high and aggravated nature,
13 one of the aggravating factors. There's going to be a
14 whole list of them that you're given a choice from.

15 One of the elements of the aggravated factors is the
16 evidence of serious bodily injury. You will have all of
17 the photos that were shown to you on the overhead. You'll
18 have them back there with you.

19 You have a bruise on an arm. No treatment, no pain
20 medication given, no stitches, no surgery, no evidence or
21 testimony of any, any debilitating injury, any disability
22 from being unable to use the arm, scratch on the neck. And
23 it was testified to is a knot on the head. The pictures
24 don't actually show that.

25 The state hasn't met their burden of proof in terms of

Closing arguments

1 serious bodily injury. We're told that Ms. Sandifer is at
2 the sheriff's, excuse me, the emergency room for three and
3 a half to four hours. That's what we are told. No
4 evidence of that.

5 Again, is a beer bottle a deadly weapon? Somebody
6 reasonably believing it to be a deadly weapon? No
7 testimony to that effect.

8 No evidence of a great disparity in physical
9 conditions, any sort of disability that Ms. Sandifer may
10 employ, great disparity in terms of sizes, height, weight,
11 strength, physical conditions. No evidence in that regard.

12 The state has failed to prove the aggravating
13 circumstances required in this case, ladies and gentlemen.
14 You're going to have an option to determine if the state
15 has proved assault and battery by Mr. Lyles. And then you
16 have to make a decision as to whether they've also proved
17 the aggravating circumstances.

18 I submit to you, ladies and gentlemen, that they
19 haven't proved an assault and battery by Mr. Lyles. But at
20 the most they haven't proved an assault and battery,
21 certainly haven't proved it's a high and aggravated nature.

22 Now, grand larceny, the event that kind of started all
23 of this. You saw the video from the Lyman Car Wash. Quite
24 frankly, ladies and gentlemen, other than the testimony
25 that Ms. Mathis says, yes, that is her and, yes, that is

Closing arguments

1 her vehicle, you can't really even tell that that's Ms.
2 Mathis, quite frankly, in that video. The identity, being
3 able to identify somebody as a perpetrator or an actor or a
4 victim in that video, is virtually impossible.

5 The testimony was, is that the person that stole that
6 truck had on a red or a dark or a black hooded sweatshirt
7 and/or a black coat. The person that is seen driving that
8 truck some ten hours later in Duncan is wearing a
9 short-sleeved lighter-in-colored blue shirt. That is not a
10 black coat or a red hooded sweatshirt or a dark hooded
11 sweatshirt. That's a blue shirt.

12 You cannot identify the person that steals that truck
13 from the car wash. Ms. Mathis told you that she couldn't
14 identify him the following day. She was too nervous,
15 couldn't do it.

16 Two days later on Monday she is now able to pick
17 somebody from a lineup after she testifies she'd already
18 been given information about the case.

19 Tanesha Ballenger was never shown a lineup. She's
20 given her statement to the police three days after the
21 event occurs. She's never shown a lineup to be able to
22 identify him as the person that stole the truck.

23 Why? Because at that point they already had him in
24 custody. They'd already decided they had their man and
25 they had to rush to judgment, didn't need, you know, to be

Closing arguments

1 bothered with the actual facts and details of the
2 investigation because we've already got him in custody.

3 The only thing, ladies and gentlemen, that the state
4 has proven to you beyond a reasonable doubt is that
5 Mr. Lyles was in a stolen vehicle with stolen property.
6 And he's not charged with that. That's not a crime for you
7 to even be considering in this trial.

8 At 12:00 o'clock on March the 7th of 2009 an unknown
9 man steals Ms. Mathis' truck. At 6:00 o'clock Ms. Sandifer
10 is attacked. At 10:00 o'clock Mr. Lyles and Troy Berry are
11 found in a stolen vehicle in Duncan and arrested.

12 At 11:00 o'clock while in the criminal investigative
13 division at the same time a victim is shown a man that
14 police have already put out a BOLO for him on assault and
15 battery of a high and aggravated nature -- the Duncan
16 police didn't respond to a be-on-the-lookout for an armed
17 robbery or be on the lookout for a kidnapping -- be on the
18 lookout for a grand larceny.

19 They were told to be on the lookout for an assault and
20 battery of a high and aggravated nature, at 10:00 o'clock
21 in the evening by a man that they already knew his
22 identity, be on the lookout for assault and battery in a
23 truck driven by Noel Michael Lyles.

24 Before that truck was even stopped the police in this
25 case have decided who their man was. Before Ms. Sandifer

Jury charge

1 is ever shown a photo lineup supposedly they had already
2 decided who their man was.

3 Two days before Karen Mathis was ever shown a photo
4 lineup they'd already decided who their man was. An hour
5 before she's shown the man by her husband and the sheriff's
6 office where he works by his investigators taking care of
7 one of their own they'd already decided who their man was.

8 And now the state wants you to take that rush to
9 judgment and turn that into proof beyond a reasonable
10 doubt. That's not our constitution, ladies and gentlemen.
11 That's not the law in this state; that's not the law in
12 this country; that's not the law in any civilized country.

13 No one should have their property stolen; no one
14 should be deprived of their liberty; no one should be
15 convicted upon evidence less than what is constitutionally
16 viable.

17 It's your sworn duty to hold the state to their
18 burden, ladies and gentlemen. And on behalf of Michael
19 Lyles I ask you for justice. Thank you.

20 THE COURT: Madam forelady and ladies and gentlemen of
21 the jury, you of course have heard and seen all of the
22 evidence. And now you've heard the final summations of the
23 lawyers; and therefore it now becomes my duty and
24 obligation to instruct you on the law that's applicable in
25 the case. And then you'll be asked to go back and begin

Jury charge

1 with your deliberations. And through that process you'll
2 examine the evidence, decide the facts, apply the law and
3 arrive at a fair and just decision in the case.

4 It is your exclusive duty to determine what the facts
5 are. You do that through your own common sense examination
6 and evaluation of all of the testimony and other evidence
7 received during the trial of this case.

8 You 12 jurors alone will decide what weight, value and
9 effect to give to any particular testimony or other
10 evidence in the case. Your sole objective of course is to
11 simply reach the truth in the matter, and by doing that you
12 will have fulfilled your obligations as jurors, and that is
13 to give both the state and this defendant a fair and
14 impartial trial.

15 Now, in this case, as you know, the state has charged
16 the defendant with having committed four separate and
17 distinct offenses that are alleged to have arisen out of
18 one particular event or course of events which the state
19 alleges occurred back on March the 7th of 2009.

20 By way of these three indictments the state has
21 accused the defendant of having committed the crimes of
22 armed robbery, kidnapping, assault and battery of a high
23 and aggravated nature, and grand larceny.

24 The allegations setting forth those charges are
25 contained in those documents called the indictments which I

Jury charge

1 referred to prior to and after your selection.

2 These indictments will be in the jury room, because
3 the indictments, Madam Forelady, are going to serve as the
4 verdict forms. It's on the back of the indictment that you
5 will indicate the jury's unanimous decision as it relates
6 to the charge contained therein. But other than serving as
7 the verdict form, the indictments serve no purpose so far
8 as you jurors are concerned.

9 As I have told you previously, they are not evidence
10 of anything. They do not prove anything. They simply set
11 forth the allegations. And they will be in the jury room
12 to serve as the verdict forms.

13 Now, as to each of the charges and the allegations
14 contained in those indictments the defendant has entered a
15 plea of not guilty. And as I've told you, that plea of not
16 guilty has placed upon the state the burden of proving the
17 allegations that they have set forth in each of those
18 indictments, the burden of proving each of the essential
19 elements of the crimes that they have alleged against the
20 defendant; and therefore the burden is upon the state to
21 establish the defendant's guilt to the satisfaction of you
22 12 jurors beyond a reasonable doubt before a verdict of
23 guilty could be returned as to any of the particular
24 charges.

25 You are instructed that it is a vital, important and

Jury charge

1 cardinal rule of law that every defendant in a criminal
2 trial, and it doesn't matter how serious the offense might
3 be for which that person stands charged, a person charged
4 with a crime is always presumed innocent of that charge.

5 That presumption of innocence remains with any
6 defendant, as it does with this defendant, from the time he
7 is placed under arrest and throughout the course of the
8 criminal process and even throughout the course of the
9 actual trial.

10 And as I've told you, that presumption of innocence
11 will be with Mr. Lyles even as you go back to begin with
12 your deliberations in this case. And that presumption of
13 innocence will be with him in that jury room, and it'll be
14 with him forever unless you 12 jurors determine that he is
15 no longer entitled to that presumption of innocence.

16 That is after you have carefully considered all of the
17 evidence in the case, and from that evidence you've
18 determined the facts, and upon determining those facts you
19 apply the law that I will have provided you, if you 12
20 jurors unanimously determine that his guilt as to a
21 particular charge has been proven beyond a reasonable
22 doubt, then he would no longer be entitled to that
23 presumption of innocence as it relates to that charge. But
24 it's only if, unless and until you are satisfied of his
25 guilt as to a charge beyond a reasonable doubt that the

Jury charge

1 presumption of innocence would no longer be applicable.

2 Now, while the state does have the burden of proving
3 the defendant's guilt beyond a reasonable doubt, that does
4 not mean that the state has to prove his guilt beyond all
5 doubt or beyond any possible doubt. But it does require
6 that the state prove his guilt to your satisfaction beyond
7 a reasonable doubt.

8 The term reasonable doubt should be given its plain
9 and ordinary meaning. A reasonable doubt is the kind of
10 doubt that would cause a reasonable person to hesitate to
11 act upon the information provided. And a defendant in a
12 criminal trial is entitled to any reasonable doubt that
13 arises from the evidence or lack of evidence in a case.
14 And if upon any factual issue essential to a finding of a
15 verdict of guilty you have some reasonable doubt as to how
16 that issue should be resolved, it would be your duty to
17 resolve that reasonable doubt in favor of the defendant.

18 And therefore if upon your consideration of the whole
19 case as it relates to a particular charge you have a
20 reasonable doubt as to his guilt, you must resolve that
21 reasonable doubt in his favor and return a verdict of not
22 guilty.

23 And at the same time, after you've considered all of
24 the evidence and decided the facts and applied the law, if
25 you have no reasonable doubt as to the defendant's guilt as

Jury charge

1 it relates to a particular charge, then it would be your
2 corresponding duty to convict the defendant or to find him
3 guilty of any crime that has been proven to have been
4 committed by the defendant beyond a reasonable doubt.

5 Now, the same law that provides that you are the
6 judges of the facts also provides that I am the judge of
7 the law. And that simply means that nobody is going to
8 tell you how to arrive at your determination of fact in
9 this case.

10 As I've told you, you do that through the exercise of
11 good judgment and common sense conscientiously applied to
12 the testimony and evidence received during the trial of the
13 case.

14 You must however under your oath as a juror accept the
15 law as I provide it to you as being the law that is
16 applicable in this particular case. You're never to
17 concern yourself with what you thought the law was before
18 you came to serve as a juror this week or what you think
19 the law ought to be.

20 You must simply under your oath accept the law as I
21 provide it to you as being the law that is applicable in
22 this particular case. And then you simply take that law
23 and you apply it to the facts as you 12 jurors determine
24 those facts to be based upon your common sense examination
25 of the evidence in the case.

Jury charge

1 Now, as you have been told, you are the sole judges of
2 the facts in this case. And you are therefore necessarily
3 the sole judges of the credibility and the believability of
4 each witness that has testified during the trial of this
5 case.

6 You 12 jurors alone will decide what weight, value and
7 effect to give to any particular witness' testimony, or
8 even portions of that testimony. And there are several
9 factors which you should take into consideration in
10 arriving at your assessment as to a witness' credibility
11 and believability, and I'm going to list those factors for
12 you.

13 You may consider the demeanor of the witness, that is
14 how the witness appeared to you as the witness testified
15 from the witness stand. In other words, was the witness
16 straightforward in responding to questions, or was the
17 witness hesitant or evasive in responding to questions that
18 were asked of that witness?

19 Simply put, did the witness appear to you to be
20 telling the truth and to have knowledge of the facts to
21 which that witness has testified?

22 You should also consider whether or not the testimony
23 of a witness is consistent, or is it inconsistent with that
24 witness' own testimony or statements made by that witness,
25 whether it be in court or outside of court.

Jury charge

1 And you should consider whether or not the testimony
2 of a witness is consistent, or is it inconsistent with
3 other testimony or other evidence received during the trial
4 of the case?

5 You should also consider how the witness came to know
6 the facts to which a witness has testified. In other
7 words, what was a particular witness' opportunity and
8 ability to perceive the existence of those facts to which
9 that witness has testified by having previously used his or
10 her senses. And then what is that witness' ability to be
11 able to come into court and to accurately recollect to you
12 as to what they have previously perceived by use of their
13 senses.

14 You should also consider any bias or prejudice or
15 interest that a witness might have in the case. In other
16 words, do you find some reason that a particular witness
17 would come into court and would testify one way or another
18 to help or to hurt one side or the other.

19 And you may consider any interest that a witness might
20 have in the outcome of the case if you determine that a
21 witness does have such an interest and you find that that
22 interest would bear upon that particular witness'
23 credibility.

24 You may also consider whether or not the testimony of
25 a witness was strengthened, or was it weakened by other

Jury charge

1 testimony or other evidence received during the trial of
2 the case?

3 Now, during the course of this trial you've also heard
4 certain evidence elicited from a witness while testifying
5 on the stand that related to that witness having prior
6 convictions for certain types of criminal offenses.

7 Ordinarily prior criminal convictions are not admitted
8 or allowed to be introduced in the trial of a case because
9 it's not relevant to any issue that the jury has to decide.

10 However, the law provides that when a witness has been
11 previously convicted of certain types of criminal offenses,
12 then when that witness takes the witness stand and
13 testifies evidence of those convictions may be introduced
14 during the course of that witness' testimony. But the
15 purpose of that evidence is limited and restricted to a
16 very specific purpose, and that purpose is for purposes of
17 impeachment.

18 In other words, that evidence may be considered by the
19 jury in your evaluation and in your assessment of that
20 particular witness' credibility and believability. But
21 it's not to be considered for any other purpose.

22 You simply may consider it for the purposes of
23 impeachment if you find that that evidence is credible and
24 probative on the credibility of that particular witness.

25 Now, you as the finders of the fact and you as the

Jury charge

1 judges of the credibility of each of the witnesses that
2 have testified are permitted to believe as much or as
3 little of what a witness has testified to as you deem is
4 appropriate.

5 And therefore you may believe everything that a
6 witness testified to; you may choose to believe none of it.
7 You may believe one portion of a witness' testimony and
8 reject some other portion of that same witness' testimony.
9 And in a given case you could believe one witness as
10 opposed to several, or several as opposed to one.

11 But whatever your good judgment and common sense tells
12 you is the most believable and credible testimony is the
13 testimony you should accept. And you should reject any
14 testimony or other evidence that you find not to be
15 credible or believable. Again, your sole objective is to
16 simply reach the truth in the matter. And by doing that
17 you will have fulfilled your obligations as jurors.

18 Now, in this case, as you know, the defendant has been
19 charged in three indictments with the crimes of armed
20 robbery, kidnapping, aggravated assault and battery, and
21 grand larceny.

22 There are three indictments. There are four charges.
23 I believe I have already told you that one of the
24 indictments has two charges contained in it, or two counts.
25 And that indictment sets forth the charges of armed robbery

Jury charge

1 and kidnapping. And then the other two indictments have
2 one offense set forth in each, those being aggravated
3 assault and battery and grand larceny.

4 Now, I've got to start somewhere, so I'm simply going
5 to start with the crime of kidnapping. So I'll instruct
6 you on the law as it relates to each of the separate crimes
7 by the time I have concluded.

8 The first crime that I will address is the crime of
9 kidnapping. And kidnapping is a statutory offense. There
10 are statutory offenses and there are common-law offenses.
11 Common-law offenses have simply developed over the years in
12 case law.

13 The statutory offenses are criminal offenses that have
14 been defined by the legislature. In other words, the
15 legislature meets every year from January to June. And
16 during the course of that assembly they may pass all types
17 of rules, laws and regulations that govern our conduct in a
18 variety of ways.

19 But some of those statutes are criminal statutes. And
20 that simply means that they prohibit us from engaging in
21 certain types of conduct. And where we are found to have
22 engaged in that conduct in violation of that particular
23 statute, then it would subject us to some form of
24 punishment or penalty.

25 Please understand however that the jury is never to be

Jury charge

1 concerned with punishment or penalty. That's not something
2 that a jury decides.

3 The sole purpose and function of the jury is to
4 determine whether or not a person's guilt has been proven
5 beyond a reasonable doubt. And you must make that
6 determination without regard to any punishment that might
7 result or any other consequence of your decision. You are
8 simply to determine whether or not the evidence in the case
9 proves a person guilty of a crime beyond a reasonable
10 doubt.

11 Kidnapping, as I have stated, is a statutory offense.
12 And it's defined in Section 16-3-910 of the Code of Laws of
13 South Carolina. And that particular statute provides as
14 follows: Whoever shall unlawfully seize, confine,
15 inveigle, decoy, kidnap, abduct or carry away any other
16 person by any means whatsoever without authority of law is
17 guilty of the crime of kidnapping.

18 In order for the defendant to be found guilty of a
19 violation of this particular statute it would be necessary
20 that the state has proven to your satisfaction beyond a
21 reasonable doubt each of the essential elements of the
22 crime of kidnapping.

23 The essential elements of the crime of kidnapping as
24 provided for in the statute are as follows: Number one,
25 the state has to prove that the defendant did seize or

Jury charge

1 confine or inveigle or decoy or kidnap or abduct or carry
2 away some other person by some means or method and that one
3 or more of those above described acts was done without the
4 authority of law.

5 Now, with regards to those terms set forth in the
6 first element, the term seize means to take hold of
7 suddenly and forcibly.

8 The term confine means to imprison or to restrain or
9 to restrict a person's freedom in some significant way.

10 The terms inveigle and decoy mean to lure, entice or
11 lead astray by false representations or promises or other
12 deceitful means.

13 The term abduct means to take a person away against
14 his or her will and without his or her consent.

15 The term carry away means to remove from one place to
16 another without legal authority and without consent of the
17 person being removed.

18 The term kidnap means to carry a person away through
19 the use of force and against his or her will and without
20 authority of law.

21 The term without authority of law simply means that
22 the conduct engaged in was not permitted, sanctioned,
23 condoned, allowed or justified under the law.

24 So in order for the defendant to be found guilty of a
25 violation of this particular statute the state does not

Jury charge

1 have to prove each of the terms seize, confine, inveigle,
2 decoy, kidnap, abduct or carry away.

3 Proof of any one of those prohibited acts is
4 sufficient under the law so long as it was done without
5 authority of law and without the consent of the person
6 alleged to have been the victim of a kidnapping.

7 Now, while the state must prove a kidnapping beyond a
8 reasonable doubt as I have defined that crime for you, it
9 is not necessary that the state prove any motive for the
10 conduct, nor is it necessary that any demand for money or
11 other ransom be made.

12 The next offense I will define for you is the crime
13 known as armed robbery. And the criminal offense known as
14 armed robbery necessarily includes the lesser offenses of
15 robbery, which includes the lesser offense of larceny. And
16 therefore in order for you to understand the term armed
17 robbery I will first define for you the term larceny, then
18 robbery, and then the statutory offense of armed robbery.

19 Larceny -- and this definition will apply to both the
20 crime of robbery and armed robbery, as well as the other
21 indictment. I will refer to it later -- the other
22 indictment that charges the defendant with the crime of
23 grand larceny.

24 A larceny is defined and referred to and known as
25 stealing. Larceny is defined in the law as the taking, the

Jury charge

1 stealing and the carrying away of the personal property of
2 another with the intention of permanently depriving the
3 true owner of the use of his or her property and converting
4 that property to the taker's own use.

5 A robbery is commonly referred to as a larceny by
6 force. And a robbery is defined in the law as the taking,
7 the stealing and the carrying away of the personal property
8 of another having any value whatsoever from the person or
9 from the presence of any person without his or her consent
10 and with an intent to steal by the use of force or violence
11 to accomplish the theft or by threatening the use of force
12 or violence in order to accomplish the theft.

13 Forcing a person to surrender property out of fear
14 from intimidation through the use of force or violence or
15 the threat of the use of force or violence with an intent
16 to steal the property is a robbery under the law.

17 And Section 16-11-330 of the Code of Laws provides
18 that any person who commits the crime of robbery while
19 armed with a pistol, dirk, slingshot, metal knuckles, razor
20 or any other deadly weapon is guilty of the crime of armed
21 robbery.

22 Now, within the meaning of that statute a deadly
23 weapon is defined in the law as any device or instrument
24 which in the manner it is used or is intended to be used is
25 known to be capable of producing death or serious bodily

Jury charge

1 harm.

2 Ordinary objects such as sticks or tools or even
3 hands, fists or feet which are generally not considered to
4 be a deadly weapon in the ordinary sense of the word may
5 under some circumstances be used in such a fashion or in
6 such a manner as to constitute a deadly weapon. Whether or
7 not an object has been utilized as a deadly weapon depends
8 upon the facts and circumstances of the particular case and
9 is an issue of fact to be determined by you 12 jurors.

10 The third charge that I will address is the crime of
11 assault and battery of a high and aggravated nature. An
12 assault and battery of a high and aggravated nature
13 necessarily includes the offenses of assault and also a
14 battery, and therefore assault and battery.

15 So I'll first instruct you on the definition of
16 assault, then battery, assault and battery, and aggravated
17 assault and battery.

18 An assault is defined as the unlawful attempt to do
19 violence or injury to the person of another where there is
20 the present ability to complete the attempt by way of a
21 battery.

22 A battery is the unlawful and intentional touching or
23 striking of the person of another by the person committing
24 the assault or by any object put in motion by that person.

25 A battery may be further defined as the carrying into

Jury charge

1 effect an assault by using or applying force to the person
2 of another, however slight, in a rude, angry or resentful
3 manner and without just cause or legal excuse. A battery
4 is the completion of an act doing violence or injury to the
5 person of another.

6 An assault and battery of a high and aggravated nature
7 is an assault and battery as I have defined those terms for
8 you which is accompanied by some circumstance of
9 aggravation.

10 A circumstance of aggravation is some fact or
11 incident, a detail or circumstance accompanying an assault
12 and battery that tends to enhance or to increase the
13 severity of the assault and battery.

14 Some examples of fact which might be considered a
15 circumstance of aggravation if you determine it to be
16 appropriate would include but not be limited to the
17 following circumstances: Which might include the unlawful
18 use of a deadly weapon in the commission of the assault and
19 battery, the infliction of serious bodily harm or injury
20 resulting from a battery -- serious harm or injury meaning
21 more than slight. It means substantial harm or injury. An
22 assault and battery committed during the course of the
23 intent to commit a felony crime.

24 And you are instructed that the crimes of robbery and
25 armed robbery are classified as felonies under the law.

Jury charge

1 An assault and battery occurring between parties where
2 there is a difference in their gender, and a great
3 disparity between the ages, physical conditions or
4 abilities of the parties, the taking of indecent liberties
5 with a female or a child, a resistance of lawful authority
6 as where an assault and battery occurs during the course of
7 a lawful arrest.

8 Also, you might -- an example of a circumstance of
9 aggravation is the purposeful infliction of shame or
10 disgrace.

11 Now, as I stated, the factors that I've just
12 enumerated as examples are simply examples of circumstances
13 of aggravation. But the existence of any one or more of
14 those factors that I've described, as well as any other
15 circumstances of aggravation that you might find from the
16 evidence in the case, does not automatically make an
17 assault and battery one of a high and aggravated nature.

18 But the existence of such a circumstance is a factor
19 which might be considered along with all of the other
20 circumstances and evidence presented during the trial
21 proven to have accompanied any assault and battery. And
22 you may consider those in your determination as to whether
23 or not any assault and battery is one of a high and
24 aggravated nature.

25 And the remaining offense is the crime of grand

Jury charge

1 larceny. As I told you, the crime of -- the definition of
2 larceny given during the course of the armed robbery
3 instruction is the same as for grand larceny.

4 Larceny is, again, commonly referred to and known as
5 stealing. It is defined in the law as the taking, stealing
6 and carrying away of the personal property of another with
7 the intention of permanently depriving the true owner of
8 use and possession of his or her property and converting
9 the property to the taker's own use.

10 Where the value of the property is \$1,000 or less it's
11 referred to as petit larceny. Where the value of the
12 property is more than \$1,000 it's referred to as grand
13 larceny.

14 In this case the state has charged the defendant with
15 the crime of grand larceny in an amount of \$5,000 or
16 greater, that is the value of the property was \$5,000 or
17 greater.

18 Now, with respect to each of the crimes, criminal
19 intent is also a necessary element of any crime that has to
20 be proven to your satisfaction beyond a reasonable doubt
21 just like any other element of the crime.

22 The term intent refers to the state of a person's mind
23 that directs his actions towards a specific object or goal.
24 Intent would necessarily include those consequences that
25 represent the very purpose for which an act is done, as

Jury charge

1 well as those consequences that are known to be
2 substantially certain to result from an act, even though
3 not actually or specifically intended.

4 A criminal intent is the state of a person's mind that
5 operates jointly with the commission of an act in the
6 commission of a criminal offense. Criminal intent is a
7 mental state of conscious wrongdoing in contrast to an act
8 that is done inadvertently, mistakenly or accidentally and
9 without any criminal intent.

10 Now, as I have previously instructed you, the state
11 has the burden of proving every essential element of any
12 crime alleged against the defendant beyond a reasonable
13 doubt; and therefore in this case not only must the state
14 prove beyond a reasonable doubt each of the essential
15 elements that constitute the crimes that have been alleged
16 against the defendant, but the state must further prove
17 beyond a reasonable doubt that it was the defendant named
18 in the indictments that was the perpetrator of that crime
19 and it was not someone else.

20 Now, if after a careful consideration and an
21 examination of all of the evidence presented during the
22 trial of this case relating to the issue of the
23 identification of the defendant as the perpetrator of any
24 crime proven to have been committed by someone, if you have
25 a reasonable doubt as to the accuracy of the identification

Jury charge

1 of the defendant as the perpetrator of any particular crime
2 for which he stands charged, then you must resolve that
3 reasonable doubt in favor of the defendant and return a
4 verdict of not guilty as to that charge.

5 You are instructed further, and I emphasize to you,
6 that the fact that a defendant does not testify during the
7 trial of a criminal case is not a circumstance that may be
8 considered by you 12 jurors in any fashion whatsoever
9 during your deliberations or in your determination as to
10 whether or not his guilt has been proven beyond a
11 reasonable doubt.

12 As I have already stated, the burden is on the state
13 because they bring the charge against the defendant to
14 prove his guilt beyond a reasonable doubt.

15 The burden is never upon a defendant or a person
16 accused of a crime to prove that they are not guilty or to
17 prove that they are innocent because in some cases that
18 might not even be possible.

19 Therefore you are never to draw any inference nor
20 reach any conclusion from the fact that a defendant does
21 not testify during the trial of the case, nor may that fact
22 even be considered by you or discussed by you while you are
23 engaged in your deliberations in this matter.

24 I think that covers everything.

25 During your deliberations there may come a time where

Jury charge

1 you have a question about the facts or the evidence. The
2 law does not permit me to answer questions that relate to
3 issues of fact or the evidence in the case.

4 Now that you're going back to begin with your
5 deliberations no additional evidence can be received. Even
6 if it existed you could not have it now because the case
7 has been concluded and is now going to be submitted to you.

8 If during your deliberations you have a question about
9 the facts or the evidence or the testimony of a witness or
10 the existence of some type of evidence, I am not permitted
11 to answer those questions.

12 If you have a question about the testimony of a
13 particular witness and you believe that that question can
14 be answered by having testimony replayed in whole or in
15 part, if you'll let the bailiff know that you have that
16 request we'll have the court reporter locate that
17 testimony. And we'll bring you back into the courtroom to
18 have all or any portion of a witness' testimony replayed
19 should you request it.

20 I do not have transcripts of witnesses' testimony, so
21 I cannot send you a transcript back. But if you have a
22 desire to listen to the testimony of a particular witness
23 in whole or in part, we can bring you back into the
24 courtroom for that purpose.

25 If at any time you have a question about the law that

Jury charge

1 is applicable, I am permitted to respond to questions that
2 relate to the law that's applicable. And therefore if you
3 need me to reinstruct you as to any particular law that I
4 have already provided to you, I am happy to do so.

5 If you need an additional explanation or you need a
6 clarification of the law that I have provided you, I'm
7 happy to provide that also. You'll simply have to let the
8 bailiff know that you have a need for that. And he'll let
9 me know. And then I'll bring you back into the courtroom
10 to provide you with any additional instruction,
11 clarification or explanation.

12 I don't know if we have any smokers on the jury. But
13 if anybody smokes you are allowed to smoke during
14 deliberations, but you cannot smoke in the jury room.
15 You'll have to go outside for that purpose.

16 If anybody needs to smoke, let the bailiff know.
17 They'll make arrangements to take you outside so that you
18 can accomplish that purpose.

19 You are instructed however that if at any time a juror
20 is absent for any authorized reason the deliberations must
21 stop. They may only resume when all 12 jurors are present
22 so that all may participate.

23 Also, I have absolutely no idea how long it will take
24 the jury to deliberate the case. But I will tell you this.
25 If you get to a point in your deliberations and you've not

Jury charge

1 concluded and you have a desire to order lunch, we will
2 order lunch and have that prepared and brought to the jury
3 room for your benefit.

4 It ordinarily takes about an hour to have that
5 accomplished. So simply keep that timeframe in mind as you
6 go back to begin deliberations. And as you engage in your
7 deliberations just keep in mind if you need to order lunch
8 it takes about an hour for that to be accomplished.

9 Now, Madam Forelady, one other thing. You will have,
10 as I have told you, the indictments in the jury room which
11 serve as the verdict forms.

12 It's going to be on the back of each of those
13 indictments that you're going to be asked to indicate the
14 jury's unanimous decision as it relates to that specific
15 charge.

16 One of the indictments, as you will see, charges the
17 crimes of armed robbery and kidnapping.

18 And on each indictment on the back in the lower
19 left-hand corner you'll see the word verdict. It's beneath
20 that word that you're going to be indicating the jury's
21 unanimous decision as to the charge in that indictment.

22 The indictment charging two offenses I have written
23 the beneath the word verdict count one and count two --
24 count one being the charge of armed robbery and count two
25 being the charge of kidnapping.

Jury charge

1 And so you will have to -- you'll be required to set
2 forth two verdicts on that particular indictment.

3 The other two indictments just have the one charge
4 contained in the indictment. However you are going to be
5 permitted to consider lesser-included offenses with respect
6 to the crime of armed robbery and with respect to the crime
7 of assault and battery of a high and aggravated nature.

8 So you're going to have multiple potential verdict
9 forms that you will be considering. Depending upon your
10 determination of fact and application of the law, you'll
11 indicate whatever verdict you determine to be appropriate
12 in the space provided.

13 With regard to the indictment charging in count one
14 armed robbery, with respect to armed robbery you're going
15 to have three potential verdict forms.

16 And I've also prepared a document that's going to have
17 all of these verdict forms on it so that you don't have to
18 memorize it. But if you have a question about it you can
19 certainly let me know that you have that question, and I'll
20 try to clarify anything that's not clear.

21 But with respect to the crime of armed robbery you'll
22 have three potential verdict forms. And those three
23 potential verdict forms are, number one, guilty; number
24 two, guilty of robbery, which is the lesser included
25 offense of armed robbery, which is the crime that is set

Jury charge

1 forth in the indictment; and then, thirdly, not guilty.

2 Count two of the indictment alleges the crime of
3 kidnapping. You have two potential verdict forms in that
4 regard. Those potential verdict forms are guilty and not
5 guilty.

6 The indictment alleging assault and battery of a high
7 and aggravated nature, again, you will have three potential
8 verdict forms. Those verdict forms are guilty, or guilty
9 of simple assault and battery, or not guilty.

10 And then the final indictment is that one which
11 charges grand larceny. There you have two potential
12 verdict forms. Those potential verdict forms are guilty
13 and not guilty.

14 With respect to the indictment charging grand larceny,
15 you are also going to be asked in the event you find the
16 defendant to have been proven guilty of the crime of grand
17 larceny, you'll also need to state the value of the
18 property. State the value of the property that you find to
19 have been established by the evidence in the case beyond a
20 reasonable doubt.

21 And, as I say, then sign your name, Madam Forelady, on
22 each of the indictments. There's a space provided at the
23 bottom. Well, one doesn't say foreperson. But,
24 nevertheless, the last line on each verdict form you'll
25 need to sign your name as the foreperson. Only the

Jury charge

1 foreperson needs to sign the verdict form. And then place
2 the appropriate date on it. And notify the bailiff that
3 you've reached your decision. And we'll bring you back to
4 receive those verdicts.

5 As I've told you, the state has the burden of proving
6 any crime beyond a reasonable doubt. And because you are
7 able to consider lesser included offenses, you also must be
8 convinced beyond a reasonable doubt that the defendant is
9 guilty of any offense.

10 If you have a reasonable doubt as to whether he's been
11 proven guilty of the greater or only of the lesser, you
12 have to resolve that reasonable doubt in his favor. You
13 must find him guilty of only the lesser offense. But you
14 could not find him guilty of any lesser included offense
15 unless that offense has been proven to your satisfaction
16 beyond a reasonable doubt.

17 And therefore just to be clear, if at any time that
18 you find a verdict of guilty as the proper verdict form,
19 the one word guilty, that would mean guilty of the crime
20 that is set forth in the indictment. You don't need to
21 write that out. The simple word guilty refers to the crime
22 set forth in the indictment itself.

23 Where you find a defendant to be guilty of a lesser
24 included offense, you do have to write that form out. In
25 other words, guilty of robbery or guilty of simple assault

Jury charge

1 and battery. Those are the only two lesser included
2 offenses that you'll be considering. You would have to
3 write that form out.

4 And of course if he's not been found guilty of any
5 offense as it relates to the indictments, the verdict form
6 is not guilty. And as I say, I prepared a document that
7 has all the verdict forms for each separate indictment and
8 each separate charge for your benefit just so that you will
9 have those available for your consideration.

10 All right. Let me ask the 12 primary jurors if you'll
11 please retire to your jury room. But not yet begin
12 deliberations.

13 I've got matters I'll need to address with the
14 lawyers. If I know don't need to bring you back for any
15 reason I'll simply send word by way of the bailiff that you
16 may begin with your deliberations. In that event he'll
17 bring to the jury room all of the exhibits which have been
18 introduced.

19 And to you, Madam Forelady, he will also bring the
20 indictments which will serve as the verdict form.

21 So please retire, but do not begin deliberations until
22 I send you word to do so.

23 (Whereupon, the jury retired to deliberate at
24 11:13 a.m.)

25 (Whereupon, the alternate juror was excused.)

Verdict

1 THE COURT: Are there any exceptions taken to the
2 instruction or requests for additions to the instruction by
3 the state?

4 MR. GOWDY: No exceptions, no objections.

5 THE COURT: By the defendant?

6 MS. HODGES: Your Honor, there are no exceptions and
7 no additions.

8 THE COURT: All right. Let me ask y'all to verify the
9 exhibits before they go back, please.

10 (Pause.)

11 THE COURT: All right. All of the exhibits are
12 accounted for?

13 MR. BARNETTE: Yes, sir, Your Honor.

14 MS. HODGES: Yes, sir, Your Honor.

15 THE COURT: All right. Send them back and ask the
16 jury to begin their deliberations and notify us when they
17 have concluded.

18 We will be at ease while the jury is deliberating.

19 (Whereupon, the exhibits were submitted to the jury at
20 11:18 a.m.)

21 (Whereupon, a recess was taken.)

22 THE COURT: I understand the jury has reached a
23 decision.

24 Are we ready to receive it?

25 MR. GOWDY: The state is, Your Honor.

Verdict

1 MS. HODGES: The defense is ready, Your Honor.

2 THE COURT: All right. Bring them in, please.

3 (Whereupon, the jury returned to the courtroom at

4 1:20 p.m.)

5 THE COURT: Madam Forelady, have you and your fellow
6 jurors reached a unanimous decision with respect to each of
7 the separate charges contained in the various indictments?

8 THE FOREPERSON: Yes, sir, we have.

9 THE COURT: And have you indicated those decisions on
10 the back of each indictment as requested?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: And did you sign your name as the
13 foreperson and date it appropriately?

14 THE FOREPERSON: Yes, sir.

15 THE COURT: If you would, please hand those verdict
16 forms up by way of the bailiff.

17 All right. Ms. Huniecutt, I may have confused you
18 when I provided you with this potential verdict-form sheet.
19 That was simply as a guide for you and your fellow jurors.

20 So I'm going to ask you to take all of this back with
21 you, and if you'll indicate the jury's decisions on the
22 back of each indictment.

23 Okay. Let me ask all of the jurors to please go with
24 the forelady. And we will bring you back as soon as you
25 have completed the form.

Verdict

1 (Whereupon, the jury retired to the jury room at
2 1:23 p.m.)

3 (Whereupon, a recess was taken.)

4 (Whereupon, the jury returned to the courtroom at
5 1:25 p.m.)

6 THE COURT: All right. Madam Forelady, have you now
7 indicated the jury's unanimous decision on the back of each
8 indictment as requested?

9 THE FOREPERSON: Yes, sir.

10 THE COURT: And signed it?

11 THE FOREPERSON: Yes, sir.

12 THE COURT: Please hand those up.

13 You may publish the verdicts.

14 THE CLERK: Indictment No. 2009-GS-42-2199, the State
15 of South Carolina vs. Noel Lyles, count one, indicted for
16 armed robbery, the verdict is guilty.

17 Count two, indictment for kidnapping, verdict, not
18 guilty.

19 Signed by the foreperson the 13th day of November of
20 2009.

21 Indictment No. 2009-GS-42-02200, the State of South
22 Carolina vs. Noel Lyles, indictment for assault and battery
23 of a high and aggravated nature, verdict, guilty.

24 Signed by the foreperson the 13th day of November of
25 2009.

Verdict

1 Indictment No. 2009-GS-42-2201, the State of South
2 Carolina vs. Noel Lyles, indictment for grand larceny,
3 verdict, guilty of property value over \$5,000.

4 Signed by the foreperson this 13th day of
5 November 2009.

6 Ladies and gentlemen of the jury, is this your verdict
7 and still your verdict? If so, please raise your right
8 hand.

9 (Whereupon, all jurors responded in the affirmative.)

10 THE CLERK: So say you all.

11 THE COURT: Does the defendant wish to have the jury
12 polled?

13 MS. HODGES: Yes, sir, Your Honor.

14 THE COURT: All right. Poll the jury, please, ma'am.

15 THE CLERK: Ladies and gentlemen of the jury, at this
16 time I will pose a question to you, the question being is
17 this your verdict and still your verdict.

18 After I have called your juror name and number, please
19 stand and respond to the question and be seated.

20 Juror No. 61, Trena Gary, is this your verdict and
21 still your verdict?

22 THE JUROR: Yes.

23 THE CLERK: Juror No. 99, Stefanie Knapp, is this your
24 verdict and still your verdict?

25 THE JUROR: Yes.

Verdict

1 THE CLERK: Juror No. 159, Caroline Slakey, is this
2 your verdict and still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 82, Anthony Horton, is this your
5 verdict and still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror No. 67, Michael Green, is this your
8 verdict and still your verdict?

9 THE JUROR: Yes.

10 THE CLERK: Juror No. 52, Paul Ferguson, is this your
11 verdict and still your verdict?

12 THE JUROR: Yes.

13 THE CLERK: Juror No. 83, Audrey Huniecutt, is this
14 your verdict and still your verdict?

15 THE JUROR: Yes.

16 THE CLERK: Juror No. 177, Janice Twitty, is this --

17 THE JUROR: Yes.

18 THE CLERK: Juror No. 170, Michelle Tharpe, is this
19 your verdict and still your verdict?

20 THE JUROR: Yes.

21 THE COURT: Let's go ahead and do Ms. Twitty again so
22 you can finish the question, please.

23 THE CLERK: Juror 177, Janice Twitty, is this your
24 verdict and still your verdict?

25 THE JUROR: Yes.

Sentence

1 THE CLERK: Juror No. 127, Willie Norton, is this your
2 verdict and still your verdict?

3 THE JUROR: Yes.

4 THE CLERK: Juror No. 120, Kevin Morton, is this your
5 verdict and still your verdict?

6 THE JUROR: Yes.

7 THE CLERK: Juror No. 102, Elizabeth Lark, is this
8 your verdict and still your verdict?

9 THE JUROR: Yes, ma'am.

10 THE CLERK: Ladies and gentlemen of the jury, you have
11 been polled.

12 THE COURT: All right. Are there any other matters
13 that need to be addressed with the jury present?

14 MS. HODGES: No, sir.

15 MR. GOWDY: Not from the state, Your Honor.

16 (Whereupon, the trial jury was excused.)

17 THE COURT: All right. Any other matters we need to
18 address prior to the imposition of sentence?

19 MR. GOWDY: Not from the state, Your Honor.

20 MS. HODGES: Your Honor, at this time the defense
21 would move for a new trial based on the objections that we
22 raised in pretrial motions that we made and based on the
23 arguments we made at that time and the rulings that were
24 made by the Court. And we also renew our motions for
25 directed verdicts.

Sentence

1 THE COURT: All right. Those motions are each denied.

2 MS. HODGES: Thank you, Your Honor.

3 MR. GOWDY: Your Honor, may I approach?

4 THE COURT: Yes.

5 MS. HODGES: Your Honor, may I approach the bench?

6 THE COURT: Yes, ma'am.

7 Ms. Hodges, I've been handed up a copy of an
8 indictment, the State vs. Noel Lyles.

9 It indicates it's a Cherokee County case,
10 97-GS-11-449, indicating that Mr. Lyles did enter a plea of
11 guilty to the crime of burglary in the first degree. That
12 plea was entered and sentence imposed on June the 11th of
13 1998.

14 Does Mr. Lyles agree that he is that same person named
15 in that indictment?

16 MS. HODGES: Yes, Your Honor.

17 THE COURT: I've also been handed a copy of a notice.
18 It appears to have been sent to the defendant and counsel
19 notifying the defendant that the state would be seeking a
20 sentence of life imprisonment pursuant to 17-25-45 in the
21 event that he were convicted of the crime of armed robbery
22 and/or kidnapping, he previously having been convicted of a
23 most serious offense, that offense being burglary in the
24 first degree.

25 Do you and he agree that you and he were served with a

Sentence

1 copy of that notice outside of ten days prior to trial?

2 MS. HODGES: Your Honor, I can -- the answer to that
3 question is yes and no.

4 Yes, Mr. Lyles and Mr. Poole were served notice of the
5 state's intent to seek life without parole within the
6 requisite time period. However, I was not served with it.
7 I was recently added to the case. But Mr. Poole was
8 served.

9 MR. POOLE: That is correct.

10 THE COURT: Mr. Poole is present.

11 Mr. Poole, you were served with a copy of the notice?

12 MR. POOLE: Yes, sir.

13 THE COURT: And Mr. Lyles was served with a copy of
14 the notice?

15 MR. POOLE: Yes, sir.

16 THE COURT: Okay. Did the state complete affidavits
17 of service as to the notice?

18 MR. GOWDY: Yes, sir.

19 THE COURT: Do you want to make those a part of the
20 record?

21 MR. BARNETTE: They were filed with the paperwork,
22 Your Honor.

23 (Notice of life sentence and copy of Indictment.
24 97-GS-11-449 marked Court's Exhibit No. 1; potential
25 verdict forms marked Court's Exhibit No. 2.)

Sentence

1 THE COURT: Okay. All right. Any other matters on
2 behalf of the state?

3 MR. GOWDY: No, sir, unless the Court wants to hear
4 his prior history, which may not be relevant in light of
5 the --

6 THE COURT: Well, you can state it if you would like.

7 MR. GOWDY: Your Honor, he has prior convictions for
8 reckless driving, failure to stop for police vehicle,
9 resisting arrest, forgery, distribution of crack, common
10 law robbery, assault and battery of a high and aggravated
11 nature, grand larceny, burglary and the incident -- a
12 separate burglary from the one that Your Honor just
13 referenced. That would be his prior record.

14 THE COURT: All right. Ms. Hodges, I'll be glad to
15 hear from you and Mr. Poole, and Mr. Lyles if he wishes to
16 speak.

17 MS. HODGES: Thank you, Your Honor. May it please the
18 Court.

19 Understanding that based on the sentencing structure
20 and the notice that was served on Mr. Lyles and Mr. Poole,
21 I understand the Court is granted no discretion in terms of
22 a sentence that can be imposed as to the armed robbery
23 charge.

24 As to the grand -- the assault and battery of a high
25 and aggravated nature, Your Honor, and the grand larceny

Sentence

1 charge, we would request concurrent sentencing given the
2 fact that all of these events occurred on the same day.

3 The ABHAN is a related offense to the actual armed
4 robbery, and that these were all tried together in the same
5 trial, Your Honor.

6 And I understand the Court is basically not able to
7 grant any leniency as to the armed robbery charge.

8 THE COURT: All right. Mr. Lyles, is there anything
9 you'd like to add to what your lawyer has told me?

10 THE DEFENDANT: None, Your Honor, just from the Court
11 I just ask for leniency in this, your sentencing, Your
12 Honor. That's all.

13 THE COURT: Mr. Poole, have you got anything you would
14 like to add?

15 MR. POOLE: I have nothing to add, Your Honor.

16 THE COURT: Okay. On Indictment 2009-2199, that's an
17 indictment for armed robbery, wherein you have been found
18 guilty by a jury of that offense, the Sentence of the Court
19 is you, Noel Michael Lyles, be confined to the South
20 Carolina Department of Corrections for the period of your
21 natural life pursuant to Section 17-25-45 of the South
22 Carolina Code of Laws.

23 Indictment 2009-2200, an indictment for assault and
24 battery of a high and aggravated nature, wherein you have
25 been found guilty by a jury of that offense, the Sentence

Sentence

1 of the Court is you, Noel Michael Lyles, be confined to the
2 South Carolina Department of Corrections for a period of
3 ten years.

4 Indictment 2009-2201, an indictment for grand larceny,
5 wherein you have been found guilty by a jury of that
6 offense, the Sentence of the Court is you, Noel Michael
7 Lyles, be confined to the South Carolina Department of
8 Corrections for a period of five years. That sentence is
9 consecutive to any other.

10 Mr. Lyles, you have a right to appeal the verdicts of
11 the jury and the Sentence of the Court. You must file any
12 notice of your intention to appeal those decisions within
13 ten days of today's date. You can discuss that with your
14 lawyers.

15 MS. HODGES: Thank you, Your Honor.

16 THE COURT: Okay.

17 END OF REQUESTED TRANSCRIPT OF RECORD

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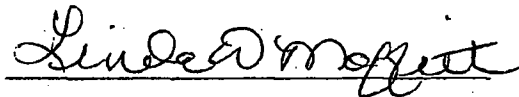
Certificate

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 9th, 12th and 13th days of November 2009.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

April 10, 2010



Linda D. Moffitt
Circuit Court Reporter

Spartanburg County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole, J. Derham
 TRIAL TYPE : Criminal
 PANEL ID : 2009GS4202197
 COURTROOM WA

DESCRIPTION : Noel Lyles

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	STRIKE	DEF	CRT	REMARKS
1 Cartee, Richard M	27	W	M	(✓)	(X)	()	
2 Gary, Trena M	61	B	F	(✓)	(✓)	()	
3 Knapp, Stefanie P	99	W	F	(✓)	(✓)	()	
4 Slakey, Caroline M	159	W	F	(✓)	(✓)	()	
5 Horton, Anthony S	82	W	M	(✓)	(✓)	()	
6 Green, Michael R	67	W	M	(✓)	(✓)	()	
7 Ferguson, Paul S	52	W	M	(✓)	(✓)	()	
8 Briggs, Rose A	18	B	F	(X)	()	()	
9 Newell, Richard J JR	126	W	M	(✓)	(X)	()	
10 Huniecutt, Audrey H	83	B	F	(✓)	(✓)	()	
11 Twitty, Janice V	177	W	F	(✓)	(✓)	()	
12 Phillips, Susan	137	W	F	(✓)	(X)	()	
13 Tharpe, Michelle C	170	W	F	(✓)	(✓)	()	
14 Norton, Willie D	127	B	M	(✓)	(✓)	()	
15 Culbreth, Kathy L	38	W	F	(✓)	(X)	()	
16 Labounty, Joanne L	101	W	F	(✓)	(X)	()	
17 Henderson, Mark	76	W	M	(✓)	(X)	()	
18 Krebs, Karen B	100	W	F	(✓)	(X)	()	
19 Sexton, Conway S	157	B	M	(X)	()	()	
20 Harvey, Larry M JR	72	W	M	(✓)	(X)	()	
21 Hester, Derrick S	78	W	M	(✓)	(X)	()	
22 Burgess, Forrest W	23	W	M	(✓)	(X)	()	
23 Morton, Kevin L	120	W	M	(✓)	(✓)	()	
24 Lark, Elizabeth T	102	W	F	(✓)	(✓)	()	

342.

Spartanburg County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Cole, J. Derham

TRIAL TYPE : Criminal

PANEL ID : 2009GS4202197

COURTROOM WA

DESCRIPTION : Noel Lyles

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PL	TH	DEF	CR	REMARKS
25 McCabe, Larry K JR	113	W	M	(✓)	(X)	()	()	
X 26 Moss, Mary E	122	B	F	(✓)	(✓)	()	()	
27 Baer, Deborah L	5	W	F	()	()	()	()	
28 Seaberg, Dorothy T	155	W	F	()	()	()	()	
29 Rogers, Beth A	148	W	F	()	()	()	()	
30 Irby, La Toya D	87	B	F	()	()	()	()	
31 Dillon, Cynthia E	96	W	F	()	()	()	()	
32 Lawing, Debra N	105	W	F	()	()	()	()	
33 Poole, Quianna L	139	B	F	()	()	()	()	
34 Aekins, Victor D	2	B	M	()	()	()	()	
35 Mcswain, Rodney C	118	W	M	()	()	()	()	

Total Number of Jurors:

35

** END OF REPORT **

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

SpartanburgNoel Micheal Lyles 174105

Full name and prison number (if any) of Applicant.

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012-CP-42-1955

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention PERRY C. I.
2. Name and location of Court which imposed sentence Spartanburg General Session.
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 09-GS-42-2199 cont one Armed Robbery count two Kidnapping
 - (b) 09-GS-42-2200 Assault and Battery of a high Aggravated nature
 - (c) 09-GS-42-2201 GRAND LARCENY
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 11/13/09 Life Sentence
 - (b) 11/13/09 10 years concurrent to Life

- (c) 11/13/09 5 years consecutive to Life
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed COURT OF APPEALS
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 3/14/02
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. none
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2012 MAY 18 PM 10:56
J. ROBERT LACKEY
CLERK

- (a) 5th/6th Ineffective Assistance of Counsel / Conflict of Interest
 (b) 4th/5th Chain of custody / Due process / Identification
 (c) 8th Trial error / Sentencing phase / Statutory mitigating evidence

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Counsel Hodges did not ask for continuance to prepare for trial
 (b) Counsel Carter did not submit correct argument of identification on appeal
 (c) Judge failed to consider relevant mitigating evidence (11) added page

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____
 iii. _____

M. HOE BLANKLEY
2021-7-8 AM 10:56

Trial Counsel's Failure to investigate case properly under the standards of representation. Trial counsel failed to meet client in timely manner. Counsel also failed to present motion of discovery in timely manner. Counsel failed to notify client of additional count of indictment of kidnapping. Counsel failed to challenge insufficient indictment prior to trial. Counsel failed to submit motion for a continuance due to indictment of kidnapping & surprised to client at V. means (S.C. 2006) 367 S.C. 374, 626 S.E. 2d 348. Conflict of interest based on Counsel Poole being waived by client and Counsel Hodges representing client subjected them to disqualification. U.S. V. Ross 3, 1509. Counsel's performance denied client Fundamental

FAIRNESS

1. ^B Chain of Custody was violated due to the discrepancies of testimony of Investigator Lorin Williams and Investigator Jason Bryant. D. Investigator John Nix Failed under S.C. code of Law 16-3-1535 to implement itemized list of property for use of evidence at trial.

2. ^C Sentencing Authority as well as counsel failed to instruct jury that latest offense was not a repetitive offense. Trial Judge and Counsel failed to address due process requirement of instruction. Client's parole ineligibility due to Turpin. Lack of knowledge of the sentence being imposed. Counsel failed also to challenge first most serious conviction based on aggravating circumstances and Trial Judge failed to consider mitigating evidence during sentence phase. Due to Trial Judge and Counsel not submitting mitigating statutory circumstances this prejudice client to proper defense and also the Fundamental Fairness of Trial.

Noel
Micheal 1.4.15

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

FILED
U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
2012 MAY -8 AM 10:56
M. HOPE BLACKWILEY

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. ROGER POOLE / KATY HODGES SPARTANBURG PUBLIC DEFENDERS OFFICE
- ii. QUANITA H. CARTER S.C. COURT OF COMMON PLEAS
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. TRIAL
- ii. APPEAL (direct)
- iii. _____

19. State clearly the relief you seek in filing this application:

REVERSAL, New sentencing hearing, Time Reduction

20. Are you now under sentence from any other court that you have not challenged?

NO

2014 MAY - 8 AM 10:56
M. J. B. CLARKLEY
SECURITY

STATE OF SOUTH CAROLINA)

County of)

VERIFICATION

I, , being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

W.L.

SWORN to and subscribed before me this 1
day of May, 2017.

[Signature]

Notary Public

(L.S.)

My Commission Expires: 1/20/21

2017 MAY -8 AM 10:56
M. JUNE BLACKLEY

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, , hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

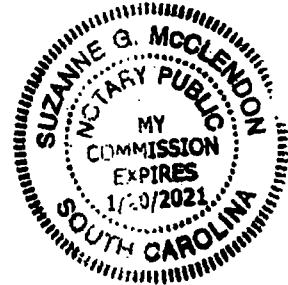
Noel Michael Lyles
Applicant

SWORN or affirmed to and subscribed before me this

1 day of May, 2012.

[Signature]
Notary Public

My Commission Expires: 1/20/21



2012 MAY -8 AM 10:56
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Noel Michael Lyles, #174105,	)	2012-CP-42-1955
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 8, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for armed robbery and kidnapping (09-GS-42-2199, count 1 and 2), assault and battery of a high and aggravated nature (09-GS-42-2200) and grand larceny (09-GS-42-2201). He was represented by J. Roger Poole, Esquire and Kathleen J. Hodges, Esquire at trial. On November 9, 2009, the Applicant proceeded to trial after which a jury found him guilty of armed robbery, assault and battery of a high and aggravated nature, and grand larceny. The jury returned a verdict of not guilty on the kidnapping charge. He was sentenced by the Honorable J. Derham Cole, to confinement for life without parole for armed robbery, run consecutive to all other sentences, a consecutive period of ten (10) years for assault and battery of a high and aggravated nature, and a concurrent period of five (5) years for grand larceny.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. He was represented by Wanda H. Carter on appeal. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Lyles, Op. No. 2012-UP-190 (filed March 14, 2012). The Remittitur was submitted on March 30, 2012.

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to "ask for continuance to prepare for trial."
 - b. Counsel failed to adequately prepare for trial, in that;
 - i. Counsel failed to meet with Applicant in a timely manner, investigate, or "present motion of discovery in a timely manner."
 - c. Counsel failed to notify Applicant of kidnapping charge, challenge the sufficiency of the kidnapping indictment prior to trial or make a motion for a continuance due to short notice of kidnapping charge;
 - d. Counsel engaged in a conflict of interest by continuing to represent Applicant despite Applicant's request to have alternate counsel appointed.¹
 - e. Counsel failed to challenge first most serious conviction based on aggravating circumstances.
2. Ineffective assistance of appellate counsel, in that;

¹ Applicant asked trial judge to remove Mr. Poole as counsel and requested that Kathy Hodges represent him instead. Initially, the court denied this request, but prior to the commencement of trial, Kathy Hodges agreed to assist in Applicant's defense alongside Mr. Poole.

- a. Appellate counsel failed to "submit correct argument of identification on appeal."
- 3. Chain of custody was violated, in that;
 - a. There were "discrepancies of testimony of investigators Williams and Bryant."
 - b. "I.D. investigator Nix failed under S.C. Code Ann. § 16-3-1535 to implement itemized list of property for use of evidence for trial."
- 4. Violation of the Eighth Amendment, in that;
 - a. Trial judge failed to consider relevant mitigating evidence during sentencing.
 - b. Trial judge failed to instruct jury that latest offense was not a repetitive offense.
 - c. Trial judge and counsel failed to instruct jury that upon conviction Applicant would receive a life sentence without parole.

III.

Respondent construes all allegations not specifically addressed below as allegations that trial counsel rendered ineffective assistance. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient.

Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Applicant also asserts that trial counsel engaged in a conflict of interest. Respondent submits that this allegation is wholly without merit. The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). Applicant has failed to point to any evidence in this regard. Accordingly, the Court should dismiss this claim.

V.

Applicant also alleges that his counsel on appeal was ineffective. While a defendant is constitutionally entitled to effective assistance of appellate counsel, Evitts v. Lucey, 469 U.S. 387 (1985), "appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, Id. at 537. When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The Respondent contends that the Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests an evidentiary hearing on this allegation. Sharper, Id.

VI.

The Applicant further contends that the trial court violated the Eighth Amendment of the Constitution when it imposed a life sentence without parole and that there were various trial court errors. Respondent interprets this allegation as Applicant's contention that he should not have been

subject to the recidivist statute of the South Carolina Code. S.C. Code Ann. § 17-25-45. Respondent submits that this raises a direct appeal issue which is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue and any others regarding alleged trial court error at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

Further, Respondent submits that Applicant was clearly subject to the mandated sentence under S.C. Code Ann. § 17-25-45 for his prior conviction of burglary, first degree, and for his subsequent conviction for armed robbery in the instant case, as both convictions are classified as "most serious offenses" under section 17-25-45 (c) (1). Therefore, the Court should summarily dismiss this allegation.

VII.

Each and every allegation contained within the application not hereinbefore expressly admitted, qualified or explained is hereby denied.

IX.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

April 17, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Noel Michael Lyles,

2012-CP-42-1955

Applicant,

v.

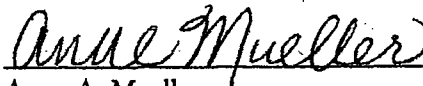
CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Paul C. MacPhail, Esquire
MacPhail Law Firm, LLC
P.O. Box 6321
Spartanburg, South Carolina 29304


Anne A. Mueller
Legal Assistant for the Respondent

DATED this 17th day of April, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF COMMON PLEAS
3
4 Noel Michael Lyles,)
5 Applicant,) TRANSCRIPT OF RECORD
6 -vs-) 2012-CP-42-1955
7 The State,)
8 Respondent.) June 26, 2013
9 Spartanburg, South Carolina
10

11 B E F O R E:

12 HONORABLE R. LAWTON MCINTOSH, JUDGE
13
14

15 A P P E A R A N C E S:

16 PAUL C. MACPHAIL, ESQUIRE
17 Attorney for the Applicant

18 SUZANNE H. WHITE, ESQUIRE
19 Attorney for the Respondent
20
21
22

23 Margaret A. Woods
24 Circuit Court Reporter
25

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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MOTIONS AND MATTERS

1 MS. WHITE: Thank Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. WHITE: This is the case of Noel Michael Lyles vs.
4 the State, it's Case Number 2012-CP-42-1955, represented today
5 by Mr. Paul MacPhail. Mr. Lyles was indi -- indicted May of
6 '09 for armed robbery, kidnapping, ABHAN and grand larceny,
7 proceeded to trial. Originally, uh, Mr. Roger Poole was
8 appointed to represent him, there was some conflict and after
9 a couple days Ms. Kathy Hodges, uh, ultimately joined and
10 represented him with Mr. Poole assisting 'cause of his
11 knowledge of the the facts. Uh, he went to trial November 9th
12 2009, was acquitted of the kidnapping charge but convicted of
13 the other charges. Because of a prior, uh, burglary first
14 degree, he had been served with a notice for life without
15 parole and that was run consecutive with a 10-year sentence
16 and a 5-year concurrent sentence and he's raised various
17 allegations of ineffective assistance of counsel and also
18 ineffective assistance of appellate counsel and I'll let, uh,
19 Mr. MacPhail clarify or detail those now.

20 MR. MACPHAIL: Yes, Your Honor.

21 THE COURT: Mr. MacPhail.

22 MR. MACPHAIL: Please the Court. Uh, ---

23 THE COURT: Yes, sir.

24 MR. MACPHAIL: --- this is Mr. Lyles seated to my left.

25 Uh, a lot of these issues just for the Court's information

MOTIONS AND MATTERS

1 stem from a statement early on in the, in the, uh, case. I
2 think it's Page 10 where, uh, Line 17 where Mr. Poole, uh,
3 admitted he just met with my client Friday before the trial
4 started Monday, that all that time before that my client
5 alleges, uh, was ineffective assistance of counsel, he was
6 facing life in jail and having met his attorney 'til the last
7 business day before trial, uh, so we're alleging ineffective
8 assistance of counsel in preparation, then there are pages and
9 pages in the transcript of discussion about whether Mr. Poole
10 was going to represent him or not. My client did not want
11 Mr. Poole to represent him, that went on for quite sometime.
12 In the middle of all that, I believe Mr. Lyles invoked his
13 rights and a *Faretta* to represent himself, uh, but nothing was
14 done to assist him, uh, to have a *Faretta* hearing or anything
15 else at that time and then we're alleging after that time once
16 Ms. Hodges was involved that there was a conflict of interest,
17 that neither one of them should have been able to represent my
18 client since he fired Mr. Poole, they were in the same law
19 firm, he alleges there was a conflict of interest there that,
20 uh, that both attorneys should have recognized. Uh,
21 subsequent to that he's alleging that, uh, that because of the
22 lack of preparation and Ms. Hodges coming on that day of
23 trial, uh, there were some issues missed in the conduct of the
24 trial that prejudiced his case and if they had had that trial
25 preparation they would have been able to catch that.

MOTIONS AND MATTERS

1 Uh, at the end of the trial, then Mr. Lyles has issues
2 about whether the jury should have been informed or not that
3 he was subject to a life sentence and he has some case law to
4 back up his position on that, uh, and then during the
5 sentencing by the judge he's alleging a failure to any attempt
6 at mitigation on his most serious charge and whether the, uh,
7 statute should have applied to him for the second most serious
8 offense.

9 Finally, he's fe -- he's alleging that on appeal there
10 was only one issue raised by the, uh, appellate counsel and
11 she was ineffective in failing to raise all the others.

12 THE COURT: What was the last thing on the appellate
13 counsel?

14 MR. MACPHAIL: Yes, that this did go up on appeal, it was
15 dismissed and remitted, uh, and she only briefed one issue,
16 that Mr. Lyles felt she ignored all the other ones that may
17 have been successful and, therefore, he's alleging she was
18 also ineffective.

19 THE COURT: Okay, call your witness.

20 MR. MACPHAIL: Yes, I call Mr. Lyles to the stand.

21 | (Whereupon, the applicant came forward.)

22 THE BAILIFF: Left hand on Bible, raise your right hand.

23 (Whereupon, a discussion was held off the record.)

24 NOEL MICHAEL LYLES, having been
25 first duly sworn, testified as follows:

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 THE BAILIFF: You have a seat please, sir.

2 DIRECT EXAMINATION BY MR. MACPHAIL:

3 Q. Please state your full name for the record.

4 A. Noel Lyles.

5 Q. Are you Noel Michael Lyles?

6 A. Noel Michael Lyles.

7 Q. Alright, and, uh, you've heard the issues that were
8 presented to the judge today, uh, let me ask you this: After
9 you were arrested on these charges, uh, were you incarcerated
10 from then on until the trial?

11 A. Yes, I was incarcerated.

12 Q. Alright. And had you -- did you apply for, uh, indigent
13 status so that you could have an attorney appointed for
14 you?

15 A. Yeah, I attempted, you understand, but I was in -- I was
16 incarcerated, I was indigent so I was not able to retain an
17 attorney so I never knew that I had an attorney 'til I
18 received the notice, the service of notice which I received
19 that from solicitor's officer and me not knowin' at the time
20 that the State had already appointed Mr. Poole as my attorney
21 so through that period of me being indicted, um, I never knew
22 that I had an attorney so I didn't even, I didn't even know at
23 the time of the indicting in in May that I had even been
24 indicted until October, ---

25 Q. Alright.

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 A. --- I went to trial November.

2 Q. Okay. So October was the first time you knew that
3 Mr. Poole was representing ---

4 A. Yeah, ---

5 Q. --- you?

6 A. --- I got serviced, yes, that's when I, uh, was aware
7 that Mr. Poole was, uh, had been assigned my attorney.

8 Q. Okay. When was the first time you met with your
9 attorney?

10 A. I woulda met Ms. [sic] Poole on the Friday before trial.
11 I went to trial that Monday, I met Mr. Poole that that Friday,
12 previous Friday. I came from SCDC that Friday and briefly
13 seen Mr. Poole roughly maybe twenty minutes at the very most
14 and I went to trial that that followin' Monday.

15 Q. Alright. And you've had a chance to read through your
16 transcript, is that right?

17 A. At this point in time?

18 Q. Yes.

19 A. No, I ha -- I have read the transcript, ---

20 Q. Yeah.

21 A. --- you understand, uh, a year, I've had the transcript
22 for over a year ---

23 Q. Right, ---

24 A. (Indiscernible cross-talk.)

25 Q. --- right, so would you agree with me and with Mr. Poole

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 when he said to the Court at the beginning of your trial that
2 he, uh, he says, "I spoke with Mr. Lyles and met with him on
3 Friday for the first time," ---

4 A. Yeah, ---

5 Q. --- he was correct ---

6 A. --- first time, ---

7 Q. --- in that?

8 A. --- right.

9 Q. Alright, "And further he has been served with a notice of
10 the State's attempt to impose a life without parole sentence
11 based on his prior record, based upon the kidnapping and armed
12 robbery charges, uh, he also says after that, I spoke with him
13 on Friday, I gave him discovery materials and we discussed the
14 case and Mr. Lyles has indicated to me today he feels he needs
15 another attorney to represent him on these charges," ---

16 A. Yes, that's correct.

17 Q. --- is all of that correct?

18 A. That's correct.

19 Q. Alright. Uh, do you know of anything that Mr. Poole did
20 to help you prior to that Friday when he met with you for the
21 first time?

22 A. Nothing at all. Um, I was completely unaware first of
23 all of his counsel, um, then I never received a letter from

24 Mr. Poole, I never received a visit from Mr. Poole, Mr. Poole
25 at this time in March had knew that he would have been

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 appointed as my counsel, Mr. Poole knew at the indicting time,
2 at the process of the indicted that I had been indicted by the
3 State and failed to notify me I had been indicted by the
4 State. There was an additional charge or addition in offense
5 of kidnapping that was placed on that indictment that I had no
6 awareness of until I received a service of notice. Like I
7 said, this was in, uh, October of 2009 only twenty-one days
8 prior to trial and Mr. Poole was very aware that he was my
9 counsel, he was very aware that I had been indicted and
10 Mr. Poole made no effort at all to contact or to consult with
11 me and to prepare adequate defense for that trial.

12 Q. Alright. And, uh, we'll get to what happened at the
13 beginning of the trial in a moment, let me ask you about some
14 other things, uh, because course we need to show the Court
15 that there were things he could have done for you if ---

16 A. Yes.

17 Q. --- he was helping, alright. Uh, as far as you know, did
18 he ever file a motion to change venue prior to the trial?

19 A. No, he did not.

20 Q. Was there a reason that you would have requested that?

21 A. Yes, there is.

22 Q. And what was that?

23 A. That reason is due to the media coverage based on a non-
24 offense that I was ---

25 THE COURT: Let me, let me, stop you for a second. Isn't

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 the new rule or been for a few years that you have to do that
2 durin' jury jury qualification?

3 MR. MACPHAIL: Well, Your Honor, there actually was a
4 motion made to change venue at the beginning of trial. I
5 mean, he wanted him to bring that motion before that, I'm not
6 a criminal lawyer, I don't know if he ---

7 THE COURT: Well ---

8 MR. MACPHAIL: --- could have brought ---

9 THE COURT: --- I guess ---

10 MR. MACPHAIL: --- it before ---

11 THE COURT: --- it's pre-trial publicity but I thought
12 that was durin' jury selection.

13 MR. MACPHAIL: Alright. I ---

14 THE COURT: Okay. Is there any other grounds you're
15 aware of Mr. MacPhail other than pre-trial publicity where
16 you'd move venue?

17 MR. MACPHAIL: That was the main reason, Your Honor, ---

18 THE COURT: No, it's not, ---

19 MR. MACPHAIL: --- well that that ---

20 THE COURT: --- that ---

21 MR. MACPHAIL: --- plus the fact that the, uh, the
22 victim, one a the victims was the wife of an officer of the
23 law in this county.

24 THE COURT: Okay. Well that that that was, that shoulda
25 been done durin', uh, it been appropriate to do it durin' jury

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 selection.

2 MR. MACPHAIL: Alright.

3 THE COURT: Okay, we'll go to the next issue please,
4 sir.

5 MR. MACPHAIL: Yes.

6 BY MR. MACPHAIL:

7 Q. Uh, as far as you know, did your attorney ever get the
8 hospital records to confirm or refute Ms. Sandifer, who's the
9 victim's, story about when she actually came to I -- ID you,
10 uh, at the sheriff's office?

11 A. No, there was never any any documentation that was
12 presented to the Court that Ms. Sandifer actually did go to
13 the hospital, um, there was no documentation that supported
14 that she, like I say, she ever, she ever went to the
15 hospital.

16 Q. Alright. Uh, and was there ever, uh, requests from your
17 attorney that you know of for there to be a SLED investigation
18 based on the fact this involved the wife of ---

19 A. Yes, when I ---

20 Q. --- a an officer?

21 A. --- yes, when I spoke with Ms. Hodges after her re -- as
22 she came on as lead counsel 'cause it was actually not
23 Mr. Poole that recommend a change of venue, it was, it was
24 Ms. Hodges that made the motion to trial Judge Cole for the
25 change of venue in this case but when it came down to most of

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 the the counsel, Ms. Hodges actually did, you understand, most
2 of the representing. Mr. Poole his wor -- his representation
3 was forced on me because I never consented to multiple
4 representation so and when Ms. Hodges took on as lead counsel
5 she never made a motion, she never gave gave me opportunity or
6 consulted me with my right to consent to multiple representation
7 [sic] because I desperately tried as you see in the, in the
8 motion discovery to release Mr. Poole as my counsel.

9 Q. Uh, we'll get to that issue, if you don't mind I'd like
10 to focus back on the question I asked you which is as far as
11 you know, was any request made for a SLED investigation ---

12 A. Yes, ---

13 Q. --- as opposed to a local investigation which was ---

14 A. --- but ---

15 Q. --- conducted?

16 A. --- it was never put on transcript or in the, in the
17 conference of me and Ms. Hodges she did suggest that she said
18 in a case like this based on publicity yes, that there should
19 have been a SLED investigation because this was a trial by
20 example, not by a trial by law based on the victim and who the
21 victim relation was with, this was a law enforcement officer.

22 Q. Alright, but as far as you know Mr. Poole did nothing to
23 help you in that regard?

24 A. No, not at all.

25 Q. Alright. Uh, now there were eyewitnesses to this

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 alleged, uh, to to the vehicle being stolen at the car
2 wash, ---

3 A. Yes.

4 Q. --- right, ---

5 A. Yes.

6 Q. --- did, as far as you know, did Mr. Poole ever interview
7 any of the other witnesses to that incident?

8 A. No, sir.

9 Q. Alright. And was that -- was one of the people there one
10 of the, uh, witnesses that identified you subsequently?

11 A. Yes, sir, that would be Ms. Mathis that ---

12 Q. Right, right.

13 A. --- that said that she at her time her statement she
14 stated she was unsure that she could make a deposit or clear
15 description if she was presented a lineup and durin' the
16 trial, you understand, she also virtually admitted that she
17 did not think that she could actually identify me so the
18 pre-trial in-court, out-court identification in *Neil vs.*
19 *Biggers* factor became a fact between her and
20 Ms. Shandif -- Sandifer but based on Ms. Sandifer's
21 identification because she was presented identification
22 6-phot -- 7-photographic lineup of me as well but under the
23 terms that me and her was in the same building at the same
24 time and this was where she could, she could have physically
25 and visually see me and when she said und -- in the statement

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1 and under oath her testimony that she identified me by
2 6-photographic lineup found out that that was not adequate,
3 that was not true because the affidavit was signed at eleven
4 o'clock, I was interviewed at 10:30 and interrogated at ten
5 minutes till eleven but when it was signed by the investigator
6 that presented her the affidavit which is a part a the motion
7 that she gave that identification at eleven o'clock but she
8 made it, she made her testimony she gave her identification
9 prior to that.

10 Q. I I promise you we'll get back to that but I need to make
11 sure we cover all your issues, ---

12 A. Thank you.

13 Q. --- okay? Uh, as far as you know, did Mr. Poole prior to
14 trial ever make any contact with the solicitor to inquire
15 about the possibility of a plea bargain?

16 A. None at all.

17 Q. Alright. Alright, now when the trial began, Mr. Poole,
18 uh, informed the Court that you wanted to talk to the to Court
19 about Mr. Poole's representation, isn't that right?

20 A. Yes.

21 Q. Alright. In fact, you did talk quite a bit with the
22 Court about the issues about Mr. Poole representing you, is
23 that correct?

24 A. Yes, I did.

25 Q. Alright. Uh, at any time was there a motion for

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 continuance filed or made by Mr. Poole?

2 A. No, there wasn't.

3 Q. Under the circumstances did you think that would have
4 been appropriate since you just found out about your
5 kidnapping charge the Friday before the trial?

6 A. You're correct ---

7 Q. Right.

8 A. --- and the reason that I didn't know is that I didn't
9 know my right to have a motion for a continuance at this time
10 because the arraignment for that kidnappin' this was basically
11 under the counsel of Ms. Hodges 'cause she was the one that I
12 consulted with about the kidnapping and the indictment and the
13 delay in presenting that indictment to me even though I
14 received the the notice, the service of notice inside the
15 statute a limitation and I felt the ju -- once I researched,
16 you understand, the process of doin', the presenting the
17 indictment that I had been deceived by Mr. Poole because he
18 knew that I had been indicted.

19 Q. Alright. Now on Page 23 of the transcript I'm going to
20 read to you a a question and response that happened during
21 this trial, this is Line 24, Mr. Poole said, "I guess that's
22 what I wanted to make clear, does he want to represent himself
23 or does he," and you say, "I do."

24 A. Correct.

25 Q. Sounds to me from that if that's accurate that you

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 invoked your right to self-represent yourself.

2 A. Yes.

3 Q. Alright. After that was there any kinda hearing as to
4 whether you were capable of representing yourself?

5 A. No, there wasn't. What happened was there was a hearing,
6 there was a rece -- not a hearing but there was a recess that
7 took place at that time and that's when Ms. Hodges became lead
8 counsel at that time.

9 Q. Alright. And when you invoked your right to represent
10 yourself, did Mr. Poole, uh, move to withdraw as as your
11 counsel?

12 A. No, he did not.

13 Q. Alright.

14 THE COURT: Well hold on, let me stop you there.

15 MR. MACPHAIL: Yes.

16 THE COURT: Looking at the line below on Page 24 trial
17 judge after he says, after the applicant says, "I do," says,
18 "He says he's not going to represent himself so that means
19 you'll have to do that."

20 MR. MACPHAIL: I read that, Your Honor, but he clearly
21 said, "I do," when asked if he's gonna represent himself. I
22 don't know why the Court is ignoring him or what happened
23 there.

24 THE COURT: Okay.

25 BY MR. MACPHAIL:

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 Q. Uh, now this is on Page 24 of the transcript that started
2 on Page 10, during those fourteen pages, did you and the judge
3 get into a an argument?

4 A. Yes, we did, yeah.

5 Q. And it went on for quite sometime, isn't that right?

6 A. Yes.

7 Q. Alright. So for instance on Page 24, let's see, I'm
8 sorry, on Page 23, Line 15 the Court says to you, "See, you're
9 too busy," kinda mocking you, does that sound ---

10 A. Right.

11 Q. --- like that was, ---

12 A. Yeah, we ---

13 Q. --- a mocking ---

14 A. --- we went through, ---

15 Q. --- comment?

16 A. --- had an altercation. Me and mis -- Mr., uh, Judge
17 Cole we went through quite a bit and that's what led up to the
18 constructive denial of representation because I refused
19 multiple times to have Mr. C -- Mr. Poole and was doing
20 desperately tryin' to waive him as my counsel and when the
21 recess took place that's when Ms. Hodges, you know, she done
22 came on based on my request ---

23 Q. Right.

24 A. --- but this time I did not know that I had the right to
25 object to Mr. Poole still bein' assistant counsel because ---

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 Q. Right.

2 A. --- I never gave, I never had hi -- I didn't know my
3 right to waive him completely as counsel once Ms. Hodges
4 became lead counsel so therefore I didn't know why Mr. Hodge,
5 I mean, why Mr. Poole was still representing me at all.

6 Q. Right.

7 THE COURT: Did he object to, uh, Ms. Hodges representing
8 him in this matter?

9 MR. MACPHAIL: After the recess when they came back it
10 says, "Ms. Hodge is also present and will be representing the
11 defendant along with Mr. Poole." I don't see anywhere after
12 that where he's on the record as consenting to her
13 representation.

14 THE COURT: Okay. I I'm sorry, what page is that?

15 MR. MACPHAIL: Uh, that was Page 25.

16 MS. WHITE: I was gonna say Page 17, Your Honor, is when
17 the applicant actually requests Kathy Hodges to represent him.

18 THE COURT: Okay.

19 BY MR. MACPHAIL:

20 Q. And finally, just so the judge understands what you were
21 goin' through at the time this happened, on Page 21, Line 16
22 the Court says to you, "I know, you're a tough guy," ---

23 A. Yeah.

24 Q. --- you remember that?

25 A. Yeah, me and him kinda went back and forth for quite a

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 while and ---

2 Q. Right.

3 A. --- at the time I didn't know who was gonna represent me
4 or if I was gonna have to represent myself ---

5 Q. Right.

6 A. --- and there was a lotta friction started between me and
7 the trial judge and initial counsel and Ms. Hodges comin' on
8 at the very last minute, you understand, as lead counsel so
9 therefore I was really not understanding my rights at this
10 point in time to why Mr. Poole was still, you understand,
11 counsel and still bein' allowed to represent me and I'm
12 clearly stating to the trial judge multiple times if you'll
13 read on transcript that I do not wish for Mr. Poole to
14 represent me, not today, not never. If I'm, if you quote me
15 throughout the transcript, I'm desperately tryin' to relieve
16 him of his counsel.

17 Q. Right. After after your argument with the Court over
18 this did you feel like you were gonna get a fair trial from
19 that judge?

20 A. I never feel like I was gonna get a fair trial based on
21 multiple facts that dealt with my attorney that have been
22 appointed by me by the State because at the time he knew that
23 I had been charged with the offense of armed robbery, you
24 know, but he he never in -- he never informed me, once again,
25 like a said earlier that I had been indicted and he never

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1 served me with any notice, he never visit me, never sent me a
2 letter, he never did anything until two days before trial.

3 Q. Alright. So is it your contention that, uh, the
4 repre -- joint representation of Kathy Hodges and Roger Poole
5 of you at this trial what, uh, that both of them were
6 disqualified due to your conflict with Mr. Poole?

7 A. Ri -- yes, sir.

8 Q. Alright. And I think you've, uh, indicated that the case
9 U.S. vs. Ross for that authority, ---

10 A. Yes.

11 Q. --- is that right?

12 A. Yes, ---

13 Q. Alright.

14 A. --- it is.

15 Q. And I think on Page 28, Line 8 the Court a -- has asked
16 Ms. Hodges does she need anymore time and the only thing she
17 says is, "The only thing that would that more time would
18 provide me would just be the ability to more -- be more firmly
19 ground in what the facts of the case are just by virtue of the
20 limited amounta time I've had exposure to the case."

21 A. Yes, not once, not twice, but three times but she still
22 did not make a motion for a continuance to the trial judge ---

23 Q. Right.

24 A. --- but in so many words she did say more time. This
25 here preparation for trial, you understand, was actually bein'

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1 denied at this point in time especially when the arraignment
2 was made for the kidnappin' that had never been made before
3 'cause this was a char -- this was an offense by that was
4 never warranted but the armed robbery had been warranted. The
5 kidnappin' was by direct indictment so I knew that I was
6 facin' the charges for the, for the armed robbery but it's all
7 the way up until the service, the notice of the service of the
8 indictment in pursuant of a life sentence is when I realized
9 that I, that I was facing not just goin' to trial for armed
10 robbery but I was goin' to trial for kidnappin' as well.

11 Ms. Hodges, you understand, brought that to the Court's
12 attention and the arraignment had happened that very day so
13 it's kinda mind bogglin' for me to understand how can she be
14 prepared if when I'm just now bein' arraigned for the offense.

15 Q. Alright.

16 A. This is basically a an enhancement if I'm looking at the
17 armed robbery and the kidnappin' both bein' placed on the same
18 indictment, it's Count One and Count Two but I don't know that
19 I'm, I don't know that I'm goin' to trial for either one based
20 on my counsel not informing me until two days before trial.

21 Q. Alright. Now let's, uh, let's look at what actually
22 happened durin' the trial to see what was not brought up as a
23 result of her not bein' prepared or Mr. Poole not bein'
24 prepared, okay. Let's look at, uh, the identification
25 hearing, the hearing for the suppression of the

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 identifications, ---

2 A. Yes, sir.

3 Q. --- okay, remember that? Alright. And for this judge's
4 information, there were two identifications ---

5 THE COURT: What what ---

6 Q. --- made from ---

7 THE COURT: --- page is that?

8 MR. MACPHAIL: Pardon me?

9 THE COURT: What page is this in the transcript?

10 MR. MACPHAIL: Alright.

11 THE COURT: I'm sorry, if you don't have it that's okay.

12 MR. MACPHAIL: I I do have it, I just need to find it.

13 MS. WHITE: Page 72.

14 THE COURT: Thank you.

15 MR. MACPHAIL: Alright. This is Page 72, Your Honor.

16 BY MR. MACPHAIL:

17 Q. There was a separate hearing held outside of the jury's
18 presence, is that right?

19 A. Yes.

20 Q. And this was the *Neil vs. Biggers* hearing.

21 A. Yes, it was.

22 Q. Alright. And this was very serious matter because they
23 were the main, they they were the only two people that put
24 you, uh, as the, uh, the person that committed these crimes,
25 that correct?

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1 A. Yes, it is.

2 Q. Alright. And the first witness who put you at the crime
3 it it was regards to the stealing of a vehicle, is that
4 correct?

5 A. Yes, that would be Ms. Mathis.

6 Q. Right, and that was the issue that was briefed on appeal
7 as well, that correct?

8 A. They were kinda conjunction because it did also state
9 Ms. Sandifer as well but it didn't go in, didn't go into
10 detail as much about Ms. Sandifer and the suppression of her
11 identification which I wanted to be committed, I mean, to be,
12 to be submitted, ---

13 Q. Right.

14 A. --- you understand, for part of that went up on appellate
15 but appellate attorney, you understand, failed to do that.

16 Q. Alright. Uh, the the first Ms. Mathis identification ---

17 A. Right.

18 Q. --- for the judge's information the, uh, the issue there
19 was that she couldn't identify you until she saw you on the
20 news for something else, is that correct?

21 A. That's right.

22 Q. Alright, and then they showed her another photographic
23 lineup and picked you out, is that correct?

24 A. That's right.

25 Q. Alright.

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1 MS. WHITE: Your Honor, I just wanna make an ob --
2 objection. I feel like he's leading the witness in this
3 situation. If we could -- I know that there has to be a
4 little bit of leading in PCR matters but I think the the
5 extent to which it's goin' on may be ---

6 THE COURT: Alright, I'll sustain that, just rephrase if
7 you can.

8 BY MR. MACPHAIL:

9 Q. Alright, with regards to the Ms. Mathis identification of
10 you, uh, she's the one, uh, I'm sorry. What, uh, -- let me
11 rethink how to say this. She was one the victims, is that
12 correct?

13 A. Alleged.

14 Q. Pardon?

15 A. She was one alleged victims.

16 Q. Alright, and where was she when she, uh, was a victim of
17 a crime?

18 A. She was at the car wash called Thompson's Car ---

19 Q. Alright.

20 A. --- Wash and there was some video footage of that tape
21 and it doesn't give a complete composite of the assailant and,
22 uh, trial counsel Hodges or Poole never made a motion to
23 suppress that that video because it never gave a complete
24 deposit [sic] of the assailant and Ms. Mathis submitted her
25 supplemental port. Her report stated that she didn't, she

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1 didn't think that she would be able because she was so nervous
2 that she didn't think she could be able to pick, you
3 understand, her her accuser out of a lineup and this is
4 several months from the incident, this is now at the trial,
5 but we're at the trial but let's say before we get to the
6 trial, uh, sh -- a couple days after the incident, now after
7 she seen footage of a crime that I'm also bein' accused of at
8 Spartanburg Regional now sh -- all of a sudden she can make a
9 a deposit of her accuser but just two days of the o -- warrant
10 officers goin' to her, goin' back to her home and askin' her
11 did she think she could identify and she she said that she
12 couldn't, this is by statement and by transcript.

13 Q. Alright, and is that, uh, publicity part a the reason why
14 you wanted the the venue changed?

15 A. Change venue because he was, uh, they were showin'
16 somethin' that was not an offense that I was standing trial
17 for.

18 Q. Alright. Now with regards to Ms. Sandifer, tell the
19 judge, uh, the circumstances of her identifying you.

20 A. Her circumstances and which were aggravating
21 circumstances that were also that shoulda been suppressed
22 based on the fact that me and her was in the same building so
23 at the time that she said that she was there and bein'
24 presented the photographic lineup at -- I'm bein' apprehended
25 this, at this time, you understand, by the Duncan police so

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1 based on the testimony in the transcript there's no way
2 possible because the affidavit is signed by Ms. Sandifer and
3 Investigator Laurens at eleven o'clock.

4 Q. Alright, let me stop ya there, ---

5 A. Yes.

6 Q. --- let me get this marked.

7 (Affidavit marked Applicant's Exhibit No. 1 for
8 identification.)

9 MR. MACPHAIL: Your Honor, if I may approach the witness.

10 THE COURT: Yes, sir.

11 BY MR. MACPHAIL:

12 Q. I'm showing you what's marked Plaintiff's Exhibit 1, you
13 recognize that (indicating)?

14 A. Yes, that's the Spartanburg County Sheriff's Office Chuck
15 Wright sheriff affidavit of photograph identification.

16 Q. Alright, and is that the one you were just referring to
17 by Ms. ---

18 A. Yes.

19 Q. --- Sandifer?

20 A. Yes, sir.

21 Q. And what time does it say this happened at?

22 A. It says it happened at 2300 hours.

23 Q. And does it say sumtin' in parenthesis?

24 A. Um, eleven clock.

25 Q. Alright. And this is, tell the Court what this is, this

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1 affidavit.

2 A. This affidavit, "I Amy Dawn Sandifer have viewed a group
3 of six photographs this 7th day of March 2009 from which I
4 have positively identified Photograph Number 1598962 displayed
5 to me by Lauren Williams of the Spartanburg County Sheriff's
6 Office as the person who stopped his truck, got out with a 40
7 ounce beer bottle and came after me, pushed me into a ditch,
8 swung the beer bottle and hit me in the head with a beer
9 bottle, hit me in the nose with his hand, drug me into a and
10 drug me into the woods by his neck by my t-shirt, he then took
11 my rings in wedding and iPod, then drove off on the, on the
12 March on the 7th day of March 2007 signature Amy Dawn, Amy
13 Sandifer print name Amy Sandifer."

14 Q. Alright. And was this document introduced in the
15 suppression hearing?

16 A. No, it was not.

17 Q. Alright.

18 A. I re ---

19 Q. Did your, ---

20 A. --- I ---

21 Q. --- did your attorney ---

22 A. --- received this, I received this in my motion two days
23 before trial.

24 Q. Okay.

25 MR. MACPHAIL: Your Honor, we'd offer this up in

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1 evidence.

2 THE COURT: Any objections?

3 MS. WHITE: No objection to that, Your Honor, I just like
4 to state the State's objection it appears that this is maybe
5 direct appeal issue in regards to whether or not the
6 identifications were proper and that was raised in the hearing
7 pre-trial and ruled upon in the Court of Appeals so we would
8 just object to any direct appeal issues being raised in PCR.

9 THE COURT: Well to the extent they are I'll grant your
10 your motion but ---

11 MR. MACPHAIL: Your Honor, our argument is this has ---

12 THE COURT: Just, just, just please ---

13 MR. MACPHAIL: Oh, ---

14 THE COURT: --- for a second.

15 MR. MACPHAIL: --- yes.

16 THE COURT: Alright.

17 MR. MACPHAIL: Yes, Your Honor, that our, uh, submission
18 of this evidence to you has to do with whether, uh, counsel
19 properly represented him at the time of trial. These
20 documents were not introduced, his argument is they've -- they
21 show that he was already in the building. When she came in,
22 she saw him and then identified him on the photographic, uh,
23 display, these documents were never offered at the suppression
24 hearing, he thinks they shoulda been.

25 THE COURT: Okay.

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 THE APPLICANT: Your Honor, um, ---

2 THE COURT: No, ---

3 THE APPLICANT: --- may I?

4 THE COURT: --- sir, no, sir, you may not.

5 THE APPLICANT: Alright.

6 THE COURT: Go ahead, Mr. MacPhail.

7 BY MR. MACPHAIL:

8 Q. And, Mr. Lyles, uh, you've already testified that you
9 were present at the same building where she identified you, is
10 that ---

11 A. Yes, ---

12 Q. --- correct?

13 A. --- sir.

14 Q. Alright. And was there an investigative report done
15 about that interrogation of you on that date?

16 A. Yes, it was, um, ---

17 Q. Alright.

18 A. --- if I'm not ---

19 Q. Let let me, uh, get this marked.

20 (Investigative report marked Applicant's Exhibit No. 2
21 for identification.)

22 Let the record reflect I'm showing him Applicant's No. 2,
23 is this (indicating) the investigative report about your
24 interrogation?

25 A. Yes.

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 Q. Alright. And does it say on the second page, uh, what
2 time the interview began with you?

3 A. Yes, sir.

4 Q. And what time is that?

5 A. "At approximately 10:50 I began to interview Mr. Lyles at
6 the Spartanburg County Sheriff's Office."

7 Q. Alright. And as far as you know was this document, uh,
8 in the discovery that your attorney received prior ---

9 A. Yes.

10 Q. --- to trial?

11 A. Yes, it was.

12 Q. Uh, was this introduced, uh, at the suppression
13 hearing?

14 A. No, sir, it wasn't.

15 Q. Alright. Your Honor, we'd offer this up into evidence.

16 MS. WHITE: No no objection, Your Honor.

17 THE COURT: Admitted without objection.

18 (Applicant's Exhibit No. 2, investigative report,
19 admitted into evidence.)

20 BY MR. MACPHAIL:

21 Q. Mr. Lyles, did you, uh, feel like there were any other
22 factual issues that your attorneys missed because they had not
23 had time prepare in this matter?

24 A. Several issues that I felt that Mr. Hodges -- Ms. Hodges
25 and Mr. Poole failed, uh, the transition of Mr. Poole being

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1 initial counsel and then like I said earlier my right to
2 consent to multiple representation and things that occurred.
3 I really wanted to know why Mr. Poole was still bein' forced
4 on me as representa -- as a, as counsel because he made no
5 objections durin' the trial, he cross-examined nobody, he
6 brought forth no witnesses, he did absolutely nothing the
7 entire trial. Ms. Hodges was just freshly new to the trial,
8 she started the day of the trial and I knew that Ms. Hodges
9 was not adequately prepared for the trial and I really wanted
10 to know why I was forced and rushed into this trial.

11 Q. Alright. Were there any other evidentiary issues you
12 feel were missed because your attorneys were not prepared?

13 A. Well we'll go over the evidence for the chain of, chain
14 of custody 'cause there was no evidentiary sheets that were
15 submitted to the Court for the supposed items that were stolen
16 from Ms. Hodges. The only thing that was, that was, that was
17 evidentiary where she, uh, reports to and documentations to
18 were the, there's a t-shirt that she said that she had on that
19 day but the rings and the iPod itself there was nothin' that
20 was ever entered into evidence, there was just pictures.
21 There was nothin' that was documentate, that there was nothin'
22 that was documented and and placed into evidence.

23 Q. And did you feel like your attorneys should have
24 addressed that issue and tried ---

25 A. Yeah, but she ---

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1 (Indiscernible cross-talk.)

2 Q. --- to get that suppressed?

3 A. Sh -- but she did, Ms. Hodges did in closing arguments
4 but never durin' the trial.

5 Q. Alright. Okay. Now at the end of the trial you've
6 raised an issue that you feel the jury should have -- well,
7 you've raised an issue in your PCR application that the jury
8 shoulda been informed that if s -- if convicted you face a
9 life sentence, why do you feel that that was, uh, something
10 that shoulda been done?

11 A. Well at the time 'cause at durin' the sentencin' phase
12 the transcript says when the trial judge asks Ms. Hodges was
13 she aware of the State's pursuin' of a life sentence, she said
14 yes and she said no and that's on transcript based on the fact
15 that now I realize why Mr. Poole was still led and kept as
16 counsel because he knew that the State was pursuin' a life
17 sentence, Ms. Hodges didn't, she just knew that I was standing
18 trial for an offense that carried 30 years, she didn't know
19 that I was, I facin' a life sentence.

20 Q. Alright, but the issue you raised in your PCR, the other
21 one ---

22 A. Yes, sir.

23 Q. --- was that the jury should have known.

24 A. Thank you. I felt like I had the right to instruct the
25 jury that I was not standing trial so in their deliberation

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1 they would have possibly had a chance to, uh, include the
2 lesser offense, lesser included offense ---

3 Q. Is there, ---

4 A. --- instead of ---

5 Q. --- is there case law you rely on for that?

6 A. Uh, yes, it's *Simley vs. -- Sims vs.*, uh, State, it's
7 *Simmons vs. South Carolina*, ---

8 Q. Alright.

9 A. --- it's, uh, if the parole any eligibility is the thing
10 that brought that that case to mind because it denied me the
11 right to at least present the the jury that this is a
12 non-parole eligible offense that I'm facin'. trial for but all
13 at the same time this is a jury that doesn't know and
14 understanding trial with a counsel that does not know that the
15 State is pursuin' to give me a life sentence if I'm found
16 guilty.

17 Q. Alright. Now with regards to, uh, the sentencing and the
18 judge after, the jury has come back with their verdicts, ---

19 A. Yeah.

20 Q. --- alright, you you were we -- with me?

21 A. Yeah.

22 Q. Alright, at that point, uh, was there any mitigating
23 evidence, uh, offered to the judge on the armed robbery
24 charge?

25 A. Well we can look at the armed robbery charge and not not

NOEL MICHAEL LYLES - DIRECT EXAMINATION BY MR. MACPHAIL

1 overlook the kidnappin' but the main thing that I really
2 wanted and durin' the sentencing phase was trial counsel to
3 object to the sentencing based on the first probly most,
4 the first most serious which was was a guilty plea that was
5 11 years and it was my first most serious that I received a
6 7-year sentence to, Your Honor, and I felt like trial counsel
7 never tried to attack or defend me in any kind of way to u --
8 for the trial judge to understand that not just the jury
9 didn't know but I didn't know my right that my first most
10 serious was shoul'da been a part a my motion because now the
11 offense of armed robbery had been enhanced to armed robbery,
12 kidnapping and the pursuin' of a life sentence so I felt as if
13 the jury had the right to know, you understand, first of all,
14 that I was not just facing trial for my life but there was a
15 most serious offense and a circumstance, aggravating
16 circumstances to that first most serious before they went in
17 deliberation.

18 Q. Alright. You do admit in the transcript that you had the
19 first most serious crime, ---

20 A. Eleven years ---

21 Q. --- remember that?

22 A. --- prior. Yeah, eleven ---

23 Q. Right.

24 A. --- years prior.

25 Q. Right. And did the, uh, I think, just to make sure it's

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1 covered, your attorney never mentioned how long that that was.

2 A. He never mentioned it.

3 Q. Alright.

4 THE COURT: Let's, let's, I don't mean to interrupt you
5 in the middle, but let's take about a a 10-minute break, ---

6 MR. MACPHAIL: Alright.

7 THE COURT: --- been goin' for a couple hours.

8 MR. MACPHAIL: Yes.

9 THE COURT: You cannot talk to anybody about your your
10 testimony.

11 THE APPLICANT: Yes, sir.

12 (Whereupon, the applicant left the stand.)

13 (Whereupon, a recess was taken.)

14 THE COURT: Be seated please.

15 (Whereupon, a discussion was held off the record.)

16 THE COURT: Alright, come around, please.

17 (Whereupon, the applicant returned to the stand.)

18 (Whereupon, a discussion was held off the record.)

19 MS. WHITE: Your Honor, may we approach on a scheduling
20 question real quick while we're ---

21 THE COURT: Okay.

22 (Whereupon, a bench conference was held off the record.)

23 THE COURT: Mr. MacPhail.

24 BY MR. MACPHAIL:

25 Q. Yes, Mr. Lyles, uh, I'm sorry, one moment. Mr. Lyles,

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1 uh, prior to the break we just took have we addressed all your
2 issues regarding the trial portion, uh, today?

3 A. No, not to the extent that I would like.

4 Q. Alright. What issues have we left out?

5 A. The issues at hand based on credibility of the witnesses,
6 their reports, their testimony not far as, not not just as
7 much as the witnesses are compared to the victims in this case
8 and the credibility their testimonies regar -- in relation to
9 their their statements and as far as my right to have ample
10 amounta time to to pare [sic] for a trial this show where I I
11 I absolutely had none based on initial counsel. Even if I
12 wanted to enter a guilty plea, I had that, I didn't even have
13 that right because I didn't even know he was my attorney 'til
14 two days before my trial so there was no plea negotiations,
15 there was no effort to even go to the solicitor's office to
16 even plea for a negotiation and when it comes down to victims
17 themselves and their level a testimony, it goes back again to
18 identification once again and their testimonies throughout
19 trial that was so awkward that you could tell they bein'
20 co-rehearsed and this is a trial once again that I I stipulate
21 in the very beginning based on the media coverage and based on
22 the alleged victim and who this victim spouse was. This is
23 the wife of a law enforcement officer and I I or can't
24 emphasize enough how the investigation went and all all that
25 was involved in this investigation and the credibilities of

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1 of the investigators and their reports and their testimony and
2 I still would like to thank Ms. Hodges because she actually
3 did bring a lotta that testimony out in open court on
4 testimony that is more or less favor -- favorable in my behalf
5 because these investigators show multiple times throughout her
6 cross-examination, you understand, where this was a rush to,
7 rush to trial and rush the judge case so I felt like I never
8 had stood a chance at a fair indicting, a fair investigation,
9 nevertheless, Your Honor, a fair trial from the very
10 beginning.

11 Q. Alright.

12 A. This is a, like I s -- this is a, this is -- was a a a
13 publicity case and I feel like I I never got a fair shot at a
14 fair trial from the very beginning.

15 THE COURT: Alright, thank you, sir. You ready for
16 cross-examination?

17 MS. WHITE: Yes, Your Honor.

18 MR. MACPHAIL: Your Honor, ---

19 THE COURT: You finished? I'm sorry.

20 BY MR. MACPHAIL:

21 Q. --- well we do have to address the issue of ---

22 THE COURT: Oh, the appellate issues, I'm ---

23 Q. --- ineffective ---

24 THE COURT: --- sorry, ---

25 Q. --- assistance of ---

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1 THE COURT: --- I apologize.

2 Q. --- your appellate counsel.

3 A. Yes.

4 Q. Alright. What what exactly do you think the appellate
5 counsel did not do that she should've done on your behalf?

6 A. Uh, first of all, the malicious conduct of trial
7 judge ---

8 Q. Okay.

9 A. --- and the failure to grant the change of venue and the
10 failure to give a continuance without counsel submitting that
11 continuance based on him arraignin' me the -- at the very day
12 of the trial and not giving counsel am -- ample amounta time
13 and adequate enough time to prepare me for that trial now that
14 this is a charge that's that's not revolving around armed
15 robbery and assault and battery high aggravated nature and
16 grand larceny now there's been a kidnapping that's also
17 enhanced, it's it's not just this indictment but this entire
18 trial.

19 Q. Did your appellate counsel contact you and ask you about
20 your issues?

21 A. No.

22 Q. Alright. You understand that if your PCR is granted --
23 well, what's your understanding of what would happen if your
24 PCR is granted?

25 A. If the PCR is is granted, to my understanding that there

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 will be a new trial.

2 Q. Is that what you want?

3 A. That's what I would like.

4 Q. And do you feel results would be different if you had
5 time to prepare?

6 A. Yeah.

7 Q. Alright.

8 A. Yeah.

9 Q. No further questions, Your Honor.

10 THE COURT: Cross ---

11 MS. WHITE: Tha ---

12 THE COURT: --- examination.

13 MS. WHITE: --- thank, Your Honor.

14 CROSS-EXAMINATION BY MS. WHITE:

15 Q. Mr. Lyles, just a few questions. Your main, uh, issues
16 are with Mr. Poole as your attorney, is that correct?

17 A. No, they're not.

18 Q. And well you just indicated that you did thank Ms. Hodges
19 for the good work she did in the cross-examination of
20 witnesses and investigators?

21 A. The only reason why because she was blind and she came in
22 and didn't have no reason to deceive me and I felt like
23 Mr. Poole had deceived me from the very beginning of his
24 appointment as counsel so I needed someone and I, and I
25 desperately need someone because I wasn't evidently gonna be

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1 able to represent myself as I had hoped because this is the
2 situation that the trial judge had put me in. If I wasn't
3 gonna allow Mr. Poole to represent me, like transcript said, I
4 didn't have any choices.

5 Q. And you did request Ms. Hodges, didn't you?

6 A. I only requested Ms. Hodges because I needed somebody. I
7 would have requested anybody except for Mr. Poole at that
8 time.

9 Q. Okay. At one point, uh, I know we went through some
10 pre-trial matters when, uh, the indication has been that you
11 said you wanted to represent yourself, do you recall when the
12 judge asked you on Page 18, "Do you think they'll be able to
13 do that within five or ten minutes," referring to your family
14 retaining an attorney, you said, "No."

15 "Do you wish to represent yourself in this case," and you
16 said no.

17 A. At that time I felt like the judge was bein' sarcastic
18 because there was no way that I could in five minutes get you
19 or anyone else to come in the courtroom to represent me.

20 Q. And then he told you you had three choices: you can
21 represent yourself, you can hire a lawyer or you can use
22 Mr. Poole.

23 A. Yes.

24 Q. Okay. And you said you didn't like any a those choices.

25 A. No.

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1 Q. Okay. So at the time you had gone through several back
2 and forths with the Court about the fact that you actually
3 didn't wanna go, you asked the Court to send you back to SCDC,
4 you didn't think it was fair that you were being called to
5 trial right now.

6 A. Well actually I felt like if counsel had represented me
7 under the norms, that there would've been a continuance and me
8 and trial judge would not have gone through or would not had
9 had to go through this conflict of of who was goin' to
10 represent me and how I was gonna be represented because at
11 this time I didn't know any of my rights, I didn't even know
12 what I was standing trial for, I didn't even know to
13 twenty-one days before the trial that I was goin' to trial, I
14 didn't know until two days before the trial that who my
15 counsel was, that's why I felt like at that time I needed
16 someone that would least come to the table that would at least
17 submit a motion for a continuance because this was a rush to
18 judge, ru -- rush to trial and rush the judge case no doubt.

19 Q. And you had been in SCDC since the arrest on a probation
20 revocation, is that right?

21 A. Yes, yes, ma'am.

22 Q. Okay. And in fact Mr. Poole state on the record he had
23 actually just been served with indictments the prior week, is
24 that right?

25 A. No, it's not.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. When he s -- I'm sorry, you indicated that.

2 A. I indicated I received ---

3 Q. Okay.

4 A. --- the, I received the s -- from the solicitor's office
5 I received the service a affidavit twenty-one days prior to
6 trial and what I said was Mr. Poole knew of the indictment, he
7 knew that I had not been warranted for the kidnappin', he knew
8 that the State had pursued and enhanced the armed robbery
9 charge to kidnappin' and never notified me.

10 Q. Okay, and my question was at one point you did tell the
11 Court, I was served with indictments this previous Friday,
12 so ---

13 A. That ---

14 Q. --- at the day of trial you knew what you were being
15 charged with.

16 A. The day of, the day of the trial that which which was
17 that Monday, you know, that followin' Friday I knew because he
18 had just given me my motion a discovery that ---

19 Q. You mean ---

20 A. --- followin' Friday.

21 Q. --- the previous Friday?

22 A. Previous Friday before trial.

23 Q. Alright. And isn't it true that the kidnapping charge
24 was a direct indictment?

25 A. Yes.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. And you were ultimately acquitted of that, weren't
2 you?

3 A. Yes, I was.

4 Q. Okay. Uh, Ms. Hodges once she began representing you did
5 make a motion for change of venue which the Court denied?

6 A. Yes.

7 Q. And but the Court did ask questions on voir dire of the
8 jurors about their knowledge of any publicity regarding this
9 case or an incident at the hospital.

10 A. Right, which I asked that that should have been
11 suppressed the allegation about the hospital because that was
12 an offense that I was not standing trial for.

13 Q. And that was not mentioned at the trial, was it not?

14 A. Yes, it was. Throughout the t -- throughout the trial
15 and throughout the, uh, investigative report where he
16 mentioned that the the hospital several time and one a the
17 witnesses if I'm not mistaken, Ms. Ballenger, spoke about the
18 hospital, she spoke about she could identify me base -- she
19 she made her identification not by a lineup but her
20 identification by the news coverage from the hospital.

21 Q. Investigative report was not entered into evidence, was
22 it?

23 A. Yes, it was, it -- 'cause it's a part a the motion and
24 she be extended for ---

25 Q. No, I I mean at trial, I'm sorry.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 A. At trial, yes, it it was brought forth into to to
2 attention of the Court.

3 Q. Okay, so if the transcript reflects that there was no
4 investigative report entered as an exhibit at trial, ---

5 A. Yes.

6 Q. --- you contest that?

7 A. I contest that by facts that it all depends on which
8 which, uh, witness that you're speaking on.

9 Q. No, the actual investigative report that you said
10 mentions an incident at the hospital ---

11 A. Yeah.

12 Q. --- that was not entered into evidence at trial.

13 A. Yes, it was. They pacifically brought that up in
14 Mr. Laurens's testimony when he spoke that we had already been
15 lookin' at him from a incident that happened at the hospital,
16 that is in transcript under Mr. Laurens's, uh,
17 cross-examination under Ms., under Ms. Hodges.

18 Q. Yeah, and that was outside of the presence of the jury,
19 was it not?

20 A. No, that was durin' the trial.

21 Q. During the identification the *Neil v. Biggers* ---

22 A. Not ---

23 Q. --- hearing?

24 A. --- not the pre-trial, durin' the trial, that was him
25 under testimony.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. Um, in regards to the evidence against you
2 although I know you contest it, the State claimed to have the
3 identification from the victim Ms. Mathis?

4 A. Yes, ma'am.

5 Q. And that was also an identification in the courtroom as
6 well as on the, uh, lineup, is that right?

7 A. Let me ---

8 Q. And I'm not askin' if you agree with, ---

9 A. Yeah.

10 Q. --- I'm just askin' was that the evidence presented?

11 A. That was the evidence that was presented by the State.

12 Q. And then there was a video that was played, correct?

13 A. There was in a -- there was a video.

14 Q. Was there a second witness from the car wash that
15 testified?

16 A. That was Ms. Ballenger which I just spoke on that
17 testified that she made her identification based on the news
18 footage at the hospital. None ---

19 Q. Okay.

20 A. --- a these witnesses were ever presented a 6-photograph
21 lineup prior to the trial, that's why the in-court,
22 outta-court was was, uh, submitted by Ms. Hodges because she
23 wanted to be able to test their identification.

24 Q. And Ms. Sandifer was also a victim that identified you in
25 the courtroom and by lineup at the trial, is that right?

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1 A. She identified the in-court, outta-court under the Neils
2 vs. Biggers but prior to her identification in the pre-trial
3 when they -- when she was asked how she identified me and
4 durin' the trial she asked on transcript where was I and and
5 she was in the same building an and identified me visually,
6 not by the photographic lineup which the affidavit already
7 proves ---

8 Q. And ---

9 A. --- so therefore her her -- she vi -- that my due, my
10 right to due process was violated throughout throughout the
11 course of the identification is because she did not properly
12 identify me as she had said under oath, she identified me
13 because she was in the same room, in the same buildin' with me
14 at the same time when Lauren Woods pre -- presented her
15 6-photographic lineup so she did not identify me by due
16 process.

17 Q. Okay, I'm gonna ask you, I need, I'm gonna try to get
18 you to answer just the question that I'm askin'.

19 A. Yes, ma'am.

20 Q. At the trial she testified that she had picked you up --
21 picked you out of a lineup, ---

22 A. Yes.

23 Q. --- okay, you contest that and you argue that she had
24 seen you previously in the ---

25 A. Yeah.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. --- police station.

2 A. Yeah, sheriff's department.

3 Q. Okay, that was brought up in the *Neil v. Biggers*
4 hearing, wasn't it, prior tr -- to the trial? Your attorney
5 asked her had she seen you at the building, who had taken her
6 bag, the room, what what time, was that before or a -- after
7 identification, right?

8 A. Right.

9 Q. Okay. And that was also objected to and raised during
10 cross-examination and her identification was objected to
11 during trial, is that right?

12 A. Durin' the trial but not durin' pre-trial.

13 Q. Okay. And the *Neil v. Biggers* hearing the judge ruled
14 that the identifications could proceed.

15 A. Yes, he did.

16 Q. Okay. In addition to the identification evidence, did
17 the State present evidence that you were found with the
18 alleged stolen truck along with items in your pocket and in
19 the truck that came from the victim Ms. Sandifer and the
20 victim Ms. Mathis?

21 A. They allege, that's the most powerful word that you could
22 ever use, yes, they did, they alleged but they also didn't ---

23 THE COURT: Answer the question. The question ---

24 A. Okay.

25 THE COURT: --- is did they present evidence that that

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 said that you were found with the truck?

2 A. Was I, was I found in the truck or was there any ---

3 (Indiscernible cross-talk.)

4 THE COURT: Ask the question again.

5 A. (Indiscernible cross-talk.)

6 THE COURT: Listen to me.

7 A. Yes, sir.

8 THE COURT: You're gonna listen to the question and
9 you're gonna answer the question presented. Now if you want
10 to explain it, as long as your explanation is responsive to
11 the question bein' asked, you may do so but you must answer
12 the question first, okay?

13 A. Okay.

14 THE COURT: Alright. Go ask question again.

15 MS. WHITE: Thank Your Honor.

16 BY MS. WHITE:

17 Q. Were you found with the stolen truck that had items in it
18 that were stolen from Ms. Sandifer and Ms. Mathis?

19 A. Yes.

20 Q. Okay. And that's at the point you were arrested, is that
21 correct?

22 A. Yes.

23 Q. Okay. You, um, did get notice of the State serving life
24 without parole notice on you, is that correct?

25 A. Yes.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. And when Ms. Hodges indicated that she had not
2 received notice, did she not also say, "I'm aware of the State
3 seeking life without parole but the notice was served on
4 counsel Poole?"

5 A. She said yes and no by transcript, then she said that,
6 yes, ma'am.

7 Q. Okay. And you acknowledge that you had previously pled
8 to a burglary first degree, is that right?

9 A. Previously?

10 Q. Yes.

11 A. At what point in time durin' the trial or any time I ---

12 Q. I'm just sayin' acknowledged ---

13 A. Durin' the sentencing ---

14 Q. Yes.

15 A. --- when asked by trial judge to counsel ha -- had I ever
16 been -- was my previous record brought into effect, yes, the
17 the previous charge for first degree burglary was a, was a
18 1997 charge and a 1998 conviction by negotiated plea.

19 Q. And, uh, in the transcript you said that your attorney
20 didn't ever point out that it was from a long time ago but
21 didn't the Court adm -- state that it was a Cherokee County
22 case from 1997?

23 A. Yes, ma'am.

24 Q. Okay. So they were aware that it was a 1997 case.

25 A. The ju -- the the sentencing judge but not the jury.

NOEL MICHAEL LYLES - CROSS-EXAMINATION BY MS. WHITE

1 Q. Okay. And just finally, Ms. Hodges did cross-examine the
2 witnesses about their statements, about their identification,
3 the questions about Ms. Sandifer being in the the the station
4 at the time you were in there, uh, question as to why certain
5 witnesses did not identify or pick out of lineup on the day of
6 the incident, ---

7 A. --- yes.

8 Q. --- was that correct?

9 A. Yes, she did.

10 Q. Okay.

11 MS. WHITE: Your Honor, I think that's all the questions
12 I have.

13 THE COURT: Any response redirect?

14 MR. MACPHAIL: No, Your Honor.

15 THE COURT: Thank you. Thank you, sir, you may step
16 down.

17 (Whereupon, the applicant left the stand.)

18 MR. MACPHAIL: That completes applicant's case, Your
19 Honor.

20 THE COURT: Sir?

21 MR. MACPHAIL: That completes our case.

22 THE COURT: Thank you very much.

23 MR. MACPHAIL: Thank you.

24 THE COURT: Alright, will you call ---

25 (Indiscernible cross-talk.)

ROGER POOLE - DIRECT EXAMINATION BY MS. WHITE

1 MS. WHITE: Okay. Your Honor, we would briefly call
2 Mr. Roger Poole.

3 (Whereupon, the witness came forward.)

4 THE BAILIFF: Left hand on the Bible, raise your right
5 hand, please.

6 ROGER POOLE, having been first
7 duly sworn, testified as follows:

8 THE BAILIFF: Have a seat, please.

9 DIRECT EXAMINATION BY MS. WHITE:

10 Q. State your name for the record, please.

11 A. Roger Poole.

12 Q. And, Mr. Poole, were you appointed to represent the
13 applicant in this case initially?

14 A. Yes, I was.

15 Q. To your understanding or knowledge was he aware that you
16 were his attorney prior to the Friday before trial?

17 A. Yes, he was aware, he he had written me.

18 Q. And I was gonna ask how how you knew that he was aware,
19 so he had written you?

20 A. He had written me.

21 Q. Had you communicated with him?

22 A. No, I didn't. I didn't communicate with him until the
23 Friday before the trial.

24 Q. And how long have you been practicin' law at the time a
25 this case?

ROGER POOLE - DIRECT EXAMINATION BY MS. WHITE

1 A. Well this time is 33 years ---

2 Q. Okay, and this was ---

3 A. --- so ---

4 Q. --- several years ago so . . .

5 A. Minus, uh, four.

6 Q. Okay. And had you represented, uh, handled cases that
7 involved assaults, armed robberies?

8 A. Yes, ma'am, I have throughout the entire 29 years.

9 Q. So you felt ex -- or you were experienced in doing
10 serious crimes, uh, as well as lower level?

11 A. Yes, ma'am, I am also death penalty qualified.

12 Q. Okay. Now, uh, do you contest the fact that on the
13 record you said you had met with him the first time that
14 Friday before?

15 A. That's absolutely right.

16 Q. And had you just received the discovery?

17 A. I'd had the discovery, I don't know when it came in, it
18 typically comes in in batches. I had the discovery, I'd gone
19 over it, I looked at it, I was preparing for trial, I I didn't
20 talk to any witnesses because the -- I didn't see any need to,
21 any witnesses for the State that is, because they had given
22 lengthy statements and the reports were comprehensive as to
23 their involvement, what information they provided and so
24 forth. I went to see Mr. Lyles and brought him a copy of the
25 discovery on Friday as soon as I realized that he was in

ROGER POOLE - DIRECT EXAMINATION BY MS. WHITE

1 Spartanburg from DOC. I talked to him about the case, uh, we
2 seemed to get along okay at that point in time. I gave him
3 discovery, I told him about the case, uh, he was aware of the
4 seriousness of the charges, I talked about with him went over
5 the, uh, charges, the elements of them and what the State
6 would have to show and that I was prepared to go forward in
7 trial and our hope was to show that the case could not prove
8 his guilt beyond a reasonable doubt and, uh, and I left after
9 speaking with him. Next time I saw him was that Monday
10 morning.

11 Q. And at that point he appeared to be fairly unhappy with
12 your representation.

13 A. He wa -- he -- yes, that's a fair statement.

14 Q. Okay. And ultimately you stayed on as counsel because
15 you had gone through discovery is that why or or are you aware
16 of why the judge had you stay on as counsel?

17 A. Well, you know, and and in the record, uh, that there was
18 all this this colloquy between Mr. Lyles and Judge Cole and,
19 uh, I was present and course I got involved in the mix and
20 what eventually happened was, uh, Judge Cole gave him the
21 options, he was dissatisfied with all of the options, at some
22 point in time he mentioned the name of Kathy Hodges. A break,
23 uh, occurred, um, Ms. Hodges was, uh, nabbed and brought over
24 to the courthouse and, uh, and she volunteered to get involved
25 in the case, al -- alright, and then, uh, Judge Cole was aware

ROGER POOLE - CROSS-EXAMINATION BY MR. MACPHAIL

1 of all that and gave her from that Monday until Thursday to
2 prepare and it was my impression that I was to stay in the
3 case.

4 Q. Okay. When it came down to the trial, did you ask any
5 witnesses any questions?

6 A. No, I did not.

7 Q. Did you handle opening or closing?

8 A. I did not.

9 Q. So in regards to the handling of the trial itself
10 Ms. Hodges handled everything.

11 A. That's exactly right. I sat next to Mr. Lyles, Kathy
12 Hodges was on the other side. Kathy and I talked, uh, during
13 the course between Monday and Thursday and through Thursday
14 and into Friday about the case.

15 Q. Okay. Thank you, that's all I have for this witness,
16 Your Honor.

17 THE COURT: Cross-examination.

18 MR. MACPHAIL: May I have one moment with my client, Your
19 Honor?

20 THE COURT: (No verbal response.)

21 (Attorney/client conference held off the record.)

22 CROSS-EXAMINATION BY MR. MACPHAIL:

23 Q. Uh, Mr. Poole, how long exactly did you meet with him, do
24 you remember on that Friday?

25 A. I don't remember the length of time.

ROGER POOLE - CROSS-EXAMINATION BY MR. MACPHAIL

1 Q. Was it a long period a time? a short period a time?

2 A. I want to say around an hour.

3 Q. Okay. And during that time did you go through all that
4 discovery that had been received with Mr. Lyles?

5 A. I'm not so sure we went through all the discovery, I
6 handed it to him, I told him what my understanding of the
7 State's presentation would be, the witnesses, what they would
8 testify to and that sorta thing.

9 Q. Alright. Did you advise him at that point about his
10 rights regarding the kidnapping that was a surprise?

11 A. I I don't recall him being surprised at the kidnapping
12 being, uh, charged. I mean, he had received the notice of,
13 uh, the State's seeking a life without parole sentence if I'm
14 not mistaken on October 19 and I may be, I I I don't think I'm
15 mistaken to say he received a copy of the indictment at that
16 time.

17 Q. Alright. You didn't check with him see if he got it at
18 that point, in fact you said you never talked to him until
19 that day, 'til Friday.

20 A. That's right.

21 Q. Alright. You've heard his testimony today earlier that
22 he was surprised by the kidnappin' charge, you disagree with
23 that?

24 A. I have no reason to disagree with what he said today.

25 Q. Okay. And when exactly were you appointed to represent

ROGER POOLE - CROSS-EXAMINATION BY MR. MACPHAIL

1 Mr. Lyles?

2 A. It was in March after this occurred earlier in the
3 year.

4 Q. Alright. So from March 'til November never met?

5 A. That's correct.

6 Q. Alright.

7 THE COURT: Ta -- he he was appointed in March?

8 THE WITNESS: Yes, sir.

9 BY MR. MACPHAIL:

10 Q. And, uh, I know you've said you received some
11 communication from him, did you respond to his
12 communications?

13 A. No, I did not. He wanted to get into court as fast as
14 possible because he wanted to get a sentence that would run
15 concurrent with his violation of probation sentence which I
16 think was 3 years, that he received the violation right after
17 his arrest on these charges ---

18 Q. Okay.

19 A. --- and he was put ---

20 Q. Back ---

21 A. --- he was went back, he went in the Department of
22 Corrections in March.

23 Q. Right, and you didn't go talk to him about that request.

24 A. No, I did not.

25 Q. Alright. Uh, did you also discuss with Mr. Lyles on

ROGER POOLE - CROSS-EXAMINATION BY MR. MACPHAIL

1 Friday that he, if he was upset with finding out about
2 kidnapping suddenly that he might wanna make a motion for
3 continuance?

4 A. I don't recall that.

5 Q. Alright. How 'bout Monday mornin', did you advise him
6 about his right at that time to ask for any continuance?

7 A. Well Monday morning things had changed and, uh, Mr. Lyles
8 said a lotta things and he probably did say something to that
9 effect.

10 Q. Well did you make a motion for continuance?

11 A. No, I didn't.

12 Q. Alright. Did you make a motion to withdraw as his
13 counsel?

14 A. Uh, no, I didn't.

15 Q. Alright. After the break when you folks came back in and
16 Ms. Hodges was there, did you make a motion at that time to
17 withdraw as counsel?

18 A. No, I did not.

19 Q. And did you put on the record whether he consented to
20 Ms. Hodge bein', uh, jointly representing him with you?

21 A. No, I did not.

22 Q. Alright. And do you remember in the, uh, at the trial
23 transcript during the first part when he was discussing
24 representation, did he not say that he did not want you seated
25 anywhere near him during the trial this ---

ROGER POOLE -- CROSS-EXAMINATION BY MR. MACPHAIL

1 (Indiscernible cross-talk.)

2 A. He said something to that effect.

3 Q. Alright, but nevertheless I think you testified you sat
4 right next to him through the trial, is that correct?

5 A. That's right.

6 Q. Alright.

7 (Whereupon, a discussion was held off the record.)

8 Q. And what was your impression of the interaction between
9 him and the judge when things got heated? Did you feel like
10 that was appropriate?

11 A. Well, uh, I don't think I could say whether it was
12 appropriate or inappropriate, I -- it was, it was heated and
13 it was just two individuals disagreeing about what options
14 were available to Mr. Lyles.

15 Q. Alright. Well you heard earlier we read in the record
16 that the judge said, You're a tough man, aren't you, or
17 something to that effect, ---

18 A. Right.

19 Q. --- is that normal language from a judge towards a
20 defendant in ---

21 THE COURT: Sustained.

22 Q. --- your experience?

23 MS. WHITE: Your Honor -- thank Your Honor.

24 MR. MACPHAIL: Alright.

25 (Attorney/client discussion held off the record.)

ROGER POOLE - CROSS-EXAMINATION BY MR. MACPHAIL

1 BY MR. MACPHAIL:

2 Q. Alright. In hindsight now lookin' back on this
3 situation, is there anything further you feel like you should
4 have done in your representation of Mr. Lyles prior to trial?

5 A. Well I can always look back in hindsight. I wish that I
6 had the opportunity or make the time to go see him and spend
7 more time with him.

8 Q. Alright. That's it, ---

9 A. That's it.

10 Q. --- to spend more time with him? That's all that woulda
11 helped?

12 A. Well I think that if I coulda spent more time with him we
13 may not have be here today, ---

14 Q. Alright.

15 A. --- I'm not sure about how it would affect the outcome.

16 Q. Alright. One one other question. The issue was raised
17 by the applicant on the stand about, uh, no communication with
18 the solicitor's office to his knowledge about a plea, did you
19 make any any attempt?

20 A. There never was an opportunity for a plea option, I mean,
21 that was clear from the beginning.

22 Q. Alright.

23 A. The State ---

24 Q. How did you, how did ya know that?

25 A. Well I I talked to the Trey Gowdy and Barry Barnette and,

ROGER POOLE - REDIRECT EXAMINATION BY MS. WHITE

1 you know, that this was just pretty well set.

2 Q. Okay. No further questions of this witness, Your Honor.

3 REDIRECT EXAMINATION BY MS. WHITE:

4 Q. Just briefly, um, was part the reason that he was not
5 gonna be offered a plea bargain because of his prior criminal
6 history?

7 A. Yes.

8 Q. Okay. And that didn't just include the burglary first
9 that was the most serious, there were other convictions?

10 A. There were.

11 Q. Okay. Thank you, that's all I have, Your Honor.

12 THE COURT: I have a couple ca -- uh, questions.

13 Counsel, did you have the opportunity to hi -- to interview
14 potential witnesses? I know you said you didn't interview any
15 of the State's witnesses but did you have a opportunity to
16 impute, -- uh, in -- interview potential witnesses at all?

17 THE WITNESS: I asked, uh, on that Friday I asked, uh,
18 Mr. Lyles if there were any witnesses, I don't recall whether
19 he said, uh, the witness name that he said in the transcript,
20 uh, but I did notice that his name was on the witness list but
21 to answer the Court's question I did not interview that
22 witness and he was called by the State at trial.

23 THE COURT: Did you make any type of independent
24 investigation of the facts and circumstances of the case?

25 THE WITNESS: I looked at the discovery, I did not go out

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 to the scene or talk to any any of the State's witnesses.

2 THE COURT: Okay, thank you. Any questions as a result a
3 mine?

4 MR. MACPHAIL: No questions.

5 MS. WHITE: Nothing, Your Honor.

6 THE COURT: Alright, thank you, sir.

7 THE WITNESS: Yes, sir.

8 THE COURT: May he be excused?

9 MS. WHITE: Yes, Your Honor, no objection.

10 MR. MACPHAIL: No objection.

11 (Whereupon, the witness left the stand.)

12 MS. WHITE: Your Honor, the State would Kathy Hodges.

13 (Whereupon, the witness came forward.)

14 THE BAILIFF: Left hand on the Bible, raise your right
15 hand.

16 KATHLEEN HODGES, having been first
17 duly sworn, testified as follows:

18 THE BAILIFF: Have a seat, please.

19 DIRECT EXAMINATION BY MS. WHITE:

20 Q. Could you state your name for the record.

21 A. My name is Kathleen Hodges, I go by Kathy.

22 Q. And, um, is the recollection of everyone kind of involved
23 what you remember about how you got involved with the case?

24 A. Yes, although I don't necessarily know that I
25 volunteered. Uh, I, that I did receive a call probly

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 mid-afternoon on that Monday, uh, I don't remember if it was
2 Roger that called me, Mr. Poole called me or Mr. Allen, the
3 circuit public defender, um, I was asked to come to Judge
4 Cole's chambers. Uh, when I walked in Judge Cole was there,
5 the solicitor, the deputy solicitor, Mr. Allen, Mr. Poole, um,
6 and I was asked at that point if I would consider, uh,
7 representing Mr. Lyles given the concerns that, um, he had
8 expressed with Mr. Poole's representation, uh, and and and I
9 agreed although I explained to them that I would certainly
10 need, uh, you know, a matter of of some time to get prepared
11 at that point and Judge Cole indicated to me that he would
12 give me until Thursday morning, that was a Monday afternoon,
13 he told me he'd give me 'til Thursday morning to, uh, talk to
14 Mr. Lyles, talk to Mr. Poole, review the case file, see if I
15 could get prepared and then we'd reconvene Thursday morning.

16 Q. And during that time did you have a chance to meet with
17 Mr. Lyles?

18 A. I did. Um, I think the transcript actually, uh, details
19 the the meetings that I had with him. I believe that I met
20 with him on that Monday, I know I met with him the Wednesday
21 before trial, um, and again Thursday morning and and and
22 throughout the course of the trial.

23 Q. And did you also have a chance to meet with Mr. Poole and
24 review the discovery?

25 A. I did. Actually Mr. Poole made a a copy of the entire

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 file for me. Uh, he and I sat down, talked about, uh, issues
2 that that he and Mr. Lyles had talked about in terms of of,
3 you know, things that were of concern as well as, you know,
4 any thoughts, impressions, uh, that he had had, any plea
5 negotiations or lack thereof that had had occurred.

6 Q. And were you informed of the notice of life without
7 parole?

8 A. I was. In fact, I was informed of that I think prob --
9 I I either knew that that Mr. Poole had a life without parole
10 trial that was basically the first case on the trial docket
11 which was this case, uh, so I I kinda tangentially knew about
12 that already but then when Judge Cole, uh, asked me to to to
13 accept the appointment, uh, I was informed as well.

14 Q. Okay. And so at that point obviously you're proceeding
15 to trial on this, uh, based on the notice to seek li -- seek
16 life without parole, what were your conversations with the
17 applicant about presenting any defensive?

18 A. Well, I, I mean, I I'd sat down with him and, you know,
19 we went through the discovery, you know, and I just said tell
20 me, you know, what are your concerns, what, you know, what are
21 the issues that that that you want to be addressed, what are
22 the things that you want me to look into, what, you know, tell
23 me, tell me what your defenses are, tell me if you have any
24 witnesses, tell me, uh, you know, what we can do. I mean, in
25 the course of that, you know, we discussed a lot of things,

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 um, you know, but I specifically asked him, you know, tell me
2 what are your concerns, tell me, you know, and and how do we,
3 you know, and we talked about the best ways to attack the
4 State's evidence.

5 Q. Was an issue, one of his issues with the identifications
6 of the victims?

7 A. Absolutely.

8 Q. So just as we've heard today he had issues with maybe
9 their credibility or or how they went about identifying him?

10 A. Absolutely. Yes, I mean, there very definitely were
11 concerns that he and I both had in terms of how, uh,
12 Ms. Mathis, the victim in the grand larceny from the -- of the
13 truck at the, at the car wash, how one day just twenty-four
14 hours after she's not able to remember, too upset and then the
15 next day after that somehow miraculously is able to say, Oh,
16 yes, this is the person. Um, in the meantime there had been
17 quite a bit of publicity from an incident that had occurred at
18 the hospital that Mr. Lyles was also charged with, um, that
19 had occurred during the time that Ms. Mathis was looking at,
20 uh, potentially being able to identify him as well as then
21 there was the concern as to Ms. Sandifer, uh, being present in
22 the in, uh, CID, uh, the Criminal Investigative Division, for
23 uh, yeah, the same time that Mr. Lyles was and seeing him
24 prior, uh, prior, prior, during, or after, I mean, depending
25 on on who's telling the story and or and and I mean story in

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 in a pejorative sense but in terms of a, you know, who's
2 telling you what the facts are, uh, Ms. Sandifer, uh, you
3 know, and and law enforcement claim that she didn't see
4 Mr. Lyles until after she'd already made the identification,
5 you know, Mr. Lyles is is concerned in terms of looking at the
6 timing of everything, um, in terms of the documents that are
7 in the, in the discovery that were given to us, you know, that
8 it's basically right at the same time that he's being brought
9 into the investigative division that she's being there making
10 the identification.

11 Q. Speaking of that, uh, there've been an investigative
12 report and a document that was an affidavit of her
13 identification entered into evidence, did you feel it was
14 necessary to try to introduce those into evidence, um, to
15 prove maybe that Ms. Sandifer was not telling the truth about
16 when she identified him?

17 A. Yeah, at at this point four years later I, you know, I I
18 don't have a clear recollection, um, of that, um, you know,
19 I've think I felt at the time that we had pretty thoroughly
20 covered those issues in her cross-examination. She had
21 conveniently, um, wasn't able to recall a lot of things that
22 seemed to me would be things that she should shoulda been able
23 to recall, um, that woulda made a difference as to her
24 credibility and then, um, you know, was able to to recall
25 those things that that were more damaging, you know, towards

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 Mr. Lyles.

2 Q. Okay. And did you have the opportunity to cross-examine
3 each of the witnesses that identified Mr. Lyles?

4 A. Yes.

5 Q. And in fact had you filed a motion and argued, uh,
6 against the identification coming in prior to trial?

7 A. Um, and and and again I'm merely gonna give one of my
8 famous answers of yes and no. I don't remember whether I
9 actually filed a *Neils vs. Biggers* motion but I did make the
10 motion and and we did argue it.

11 Q. Okay. And obviously the judge denied the motion and
12 allowed in-court in -- identification ---

13 A. That's correct.

14 Q. --- in. Uh, did you have a chance to talk to any of
15 their witnesses?

16 A. Uh, I probly had a chance to, uh, you know, but my, but
17 my opportunity was limited by virtue of of trying to really
18 pour through, uh, the the discovery, get a, get a firm
19 understanding of what what I would understand the facts of
20 the, of the the State's evidence to be, um, and to, um, be
21 able to kinda do any sort of additional research that I needed
22 to do in terms of, you know, legal issues that were being
23 brought up and then going out and then actually I think I
24 would have actually gone and examined the physical evidence
25 that that I, you know, that would have, you know, been

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 presented at at trial.

2 Q. And the witness that you had indicated you had tried to
3 get in touch with or that that he had indicated he wanted
4 ultimately testified for the State?

5 A. Right, Mr., I think it was Mr. Berry. Um, I I did not
6 talk to Mr. Berry, to my -- I I don't have any notes in my
7 file that I talked to Mr. Berry so if I did, you know, I don't
8 remember talking to him. There was a a witness that I found
9 that I kind of, that I I went ahead and subpoenaed anyway
10 that, um, which is somebody that occurred to me in the, in
11 the, in the discovery mighta been somebody, it turns out that
12 person wound wound up not being called as a witness.

13 Q. And ultimately were there any other names that the
14 defendant gave you that you did not have a chance to contact
15 or subpoena?

16 A. He did not give me any other witnesses to to ask for.

17 Q. Okay. And in regards to, uh, issues about, um, the
18 hospital incident, ---

19 A. Yes.

20 Q. --- had you discussed the fact that that was something he
21 had been charged with but not convicted of and whether or not
22 that information should come forward?

23 A. Right, the the the incident at the hospital it it --
24 there apparently was a, uh, woman at the hospital, I I believe
25 that she was a coach's wife, and again this is from my

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 recollection, um, there had been a lot of publicity at the
2 time that that inc -- incident occurred. My recollection is
3 that that incident occurred prior to these incidents that he
4 was actually going to trial for, um, so there's a lotta
5 publicity in March of 2009 when the incident occurs at the
6 hospital, um, which and, you know, part of our defense
7 strategy was that that tainted the, um, identification and the
8 rush to judgment that both the witnesses and law enforcement
9 were were basic trying to pin the hospital incident as well as
10 this incident on Mr. Lyles, then again the weekend prior to
11 trial and morning of Monday morning there's a lot of publicity
12 again kind of rehashing the hospital, uh, incident, so we talk
13 a lot about that in terms of those are issues that are gonna
14 necessitate a a a request for a change in venue. Um, I
15 believe that the solicitor's office wrote in the Ms. Miller's
16 name I think was was the the person, was the victim in that
17 case, wrote in her name as somebody that, um, you know, could
18 be a potential witness in these cases, um, and you'll see that
19 there are several people in the, uh, jury voir dire that asked
20 to approach the bench. Not all those discussions involved the
21 fact that they either knew of the incident or felt that they
22 couldn't be fair jurors but many of them did, um, so it was
23 clear that there -- that that that incident played a part in
24 terms of things for us to be concerned about strategically,
25 um, we also made, uh, sure that that was not something that we

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 mentioned in front of the jury because we did not want any of
2 those incident -- that event to to taint the juror's
3 consideration of the facts of this case.

4 Q. The applicant has stated he believes that information
5 about that incident was presented before the jury, to your
6 recollection was it?

7 A. To my recollection it was not. I I just, I I've read
8 through during, um, today's testimony Ms. Ballenger's
9 testimony, I did not see any mention of that, I also read
10 through Detective Laurens' testimony in front of the jury, I
11 did not see any, um, informa -- any reference to that hospital
12 incident, um, there very well may have been some in camera in
13 front of Judge Cole and but but I was not, I was not con --
14 that was part of our strategy as to that these are the reasons
15 why we oughta need change of venue and those sorts of things,
16 um, that was not, to my knowledge we did not, we we tried very
17 hard not to mention anything in fronta the jury.

18 Q. As to some specific allegations he's raised, was there
19 any, uh, any reason that you saw you could ask to suppress the
20 video?

21 A. No. There was some things on the video that I I think we
22 stopped the video at one point right before, uh, I think there
23 may have been either an indication of asking to speak with
24 with an attorney or something like that so so I I I think the
25 video stopped right before that but in terms of the actual

KATHLEEN HODGES - DIRECT EXAMINATION BY MS. WHITE

1 suppression of the video there were not, there was not any any
2 grounds either Fourth, Fifth, or Sixth Amendment grounds that
3 I found to, uh, to be able to suppress the video.

4 Q. Was there anything, uh, that you thought was an issue
5 regarding photos of the items that were found in the truck and
6 the nec -- necessity of a chain of custody?

7 A. No, I I think that there, uh, was sufficient testimony
8 regarding chain a custody in terms of of those issues, uh,
9 and, uh, that that we did need to have the actual physical
10 evidence forms admitted.

11 Q. In your experience is there a legal right for, uh, the
12 jury to be informed that a defendant's facin' life without
13 parole sentence in a situation like this?

14 A. In a death penalty case there is, um, and then and the
15 the case that was mentioned I think was *Simmons vs. South*
16 *Carolina*, uh, there is a right, if I remember that case
17 correctly, that, uh, if if a defendant is facing a death
18 sentence that that that that they can, uh, that the jury
19 should be instructed that the the possibilities are
20 essentially, uh, a death penalty sentence or it's gonna be
21 life without parole and that's that and at that point the the
22 person is non-parole eligible. Um, in a case like this, I'm
23 not familiar with any sort of either case law or statute that
24 either allows or requires the jury to be instructed that the
25 person is facing a non-parole eligible sentence.

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 Q. And did you have or see any basis to try to attack his
2 prior plea as the basis for the most serious or life without
3 parole notice?

4 A. No, we, and and I I don't recall if we had any in depth
5 discussions regarding that that prior conviction, uh, but, uh,
6 but I I have nothing in my notes to indicate that there was
7 anything that that could suggest that that was a sentence that
8 could be attacked for the basis of life without parole
9 notification or sentence.

10 Q. And to your understanding could you offer anything in
11 mitigation after he received notice of of LWOP?

12 A. I I guess there's always things that we can can -- could
13 put them into mitigation but but that, you know, I wasn't, I
14 wasn't provided any evidence to put in mitigation.

15 Q. Okay, thank you. That's all I have, Your Honor.

16 THE COURT: Cross-examination.

17 CROSS-EXAMINATION BY MR. MACPHAIL:

18 Q. Yes, just briefly. Uh, you heard Roger Poole on the
19 stand when he said he did no independent investigation and did
20 no, did not talk to any of the State's witnesses?

21 A. Right.

22 Q. Alright. When you came on, were you then, uh, basing
23 your preparation on Roger Poole's preparation?

24 A. No, I mean, I asked him to make me a complete copy of of
25 the discovery, everything that he provided Mr. Lyles, make me

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 a complete copy of the file and then I basically started
2 working the case as as I normally do and and going through the
3 file. I talked with Mr. Lyles, uh, you know, and and so then
4 I just, I start my own preparation. I, I mean, I talked with
5 Mr. Poole as to what do ya know, what have you heard, you
6 know, that sorta thing but but I didn't base my -- the
7 preparation solely on on on Mr. Poole's preparation.

8 Q. Okay. Did you have time or did you want time to go to
9 the scene to examine on your own?

10 A. Oh, I would have loved time to have been able to to go to
11 the scene, um, and that's something that that I I quite often
12 do when I have the opportunity to do that, um, but I I didn't
13 have that luxury in this case.

14 Q. And did you talk to any of the State's witnesses on your
15 own?

16 A. Yeah, I may have talked to some of the investigators, uh,
17 you know, I don't have any specific notes as to that, uh, so,
18 I mean, so I I can't tell you for sure.

19 Q. Alright. Uh, now on this motion for change of venue
20 which you did make ---

21 A. Yes.

22 Q. --- was ever ruled on?

23 A. Uh, well not specifically. The the Court, uh, did
24 indicate that that we would see how jury selection goes. Uh,
25 during the course of, uh, we were, we were able -- well while

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 there were several people that, uh, indicated that they were
2 familiar with the hospital incident, uh, it did not appear to
3 be such that the entire jury pool was was tampered or tainted
4 rather to that extent that I did not renew the motion so so
5 no, it was never ruled on.

6 Q. Alright. When you, uh, started representing, uh,
7 Mr. Lyles, how did you deal with the multiple representation,
8 the joint representation issue?

9 A. Well and and I don't know so much that it, that I I,
10 while I can certainly understand how Mr. Lyles perceives it as
11 joint representation that, you know, essentially I was told in
12 chambers and, uh, you know, by Judge Cole and and Mr. Allen
13 that essentially Mr. Poole be available to assist me at trial,
14 that, uh, Judge Poole or Judge Cole basically had indicated
15 that, you know, Mr. Poole would stay on the case, he'd be
16 there in terms to help me with factual issues, you know, any
17 any sort of assistance that I needed to get ready for the
18 trial, uh, and essentially that's how I did it; in fact, he
19 was watching witnesses and and giving me feedback as witnesses
20 are testifying, uh, he's giving me feedback in things so that,
21 you know, in the closing argument I was actually able to argue
22 as to Ms. Sandifer's, the way that she motioned that that
23 Mr. Lyles was supposedly holding the beer bottle, you know,
24 I'm able to talk about whether that's truly somebody that's
25 using it as a deadly weapon or not so while I understand that

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 there was never anything on the record as to whether Mr. Poole
2 truly is gonna stay on, is not gonna stay on, whether
3 Mr. Lyles consents to Mr. Poole helping in the case, he quite
4 frankly was a help to me in in in the case in terms of being
5 able to make arguments to the jury about credibility of
6 witnesses and testimony.

7 Q. On the transcript, uh, before the trial starts I see on
8 Page 27, Line 3 you say, "Your Honor, the only other thing I
9 think I would be remiss in not asking the Court to inquire
10 from Mr. Lyles."

11 A. Right.

12 Q. Alright. And then you talk for a while, Court asks you
13 questions for a while, ---

14 A. Right.

15 Q. --- did the, did the judge ever in your reading of this
16 transcript ask Mr. Lyles if he consented to joint
17 representation?

18 A. He did not.

19 Q. In fact, it appears to me the only thing the judge asked
20 him was, "Do you have anything else to say, Mr. Lyles," at at
21 the end of this long, uh, this is on Page 30, Line 5, "Okay,
22 alright, Mr. Lyles, have you got anything you want to address
23 with me regarding Ms. Hodge's statements?" Did you consider
24 that to be sufficient when you started that whole line of
25 questioning with the judge?

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 A. I did.

2 Q. Alright. Did you advise him that ever prior to trial
3 that he had the right to or the the right for, uh, to consent
4 or decline consent to joint representation?

5 A. Ya know, I don't, honestly don't remember if we talked
6 much about the the joint representation issue, um, I'm going
7 to presume that Mr. Lyles and I I told him that, yeah,
8 Mr. Poole's gonna continue to assist me on this case but I
9 honestly don't remember whether we talked about that issue or
10 not.

11 Q. Alright. Uh, with regards to the evidentiary issue that,
12 uh, Mr. Lyles raised 'bout the the lack of a, uh, a record,
13 that this item was taken into my custody and here it is
14 today, ---

15 A. Um-hum.

16 Q. --- uh, did you attempt to make anything out of that at
17 trial, that I think the rings and the iPod were his concern?

18 A. Right, well, you know, and and there were, I I believe
19 that I cross-examined on those issues in terms of the fact
20 that, you know, they photographed some items but on others
21 they didn't photograph the rings, they didn't photograph, uh,
22 yeah, but they did photograph the iPod, uh, you know, there
23 was an issue in terms of the iPod having been moved from the
24 point at which it was discovered to the point of which it was
25 photographed, um, you know, and and I think that we we talked

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 about that, uh, in cross-examination, uh, as to perhaps some
2 less than standard handling, you know, of evidence and less
3 than standard protocols in handling evidence although not
4 using those terms, uh, but in terms of of actually requiring
5 the State to put in a a written chain of custody, no, I
6 didn't, I I, you know, there was I think enough testimony that
7 the chain of custody had been established.

8 Q. Alright. Uh, one other question for you, uh, with
9 regards to your time spent with Mr. Lyles before trial, think
10 I understand your testimony that you were called into Judge
11 Cole's office on Monday?

12 A. Right.

13 Q. When did you first meet with Mr. Lyles?

14 A. I met with him on that Monday, I honestly don't know if
15 it was before Judge Cole asked me to, I mean, if I was -- I'm
16 I am assuming that it woulda been after that Judge Cole asked
17 me to to to, you know, take on the case and Mr. Lyles and I
18 met, uh, here at the courthouse, uh, but I I don't know what
19 time that was.

20 Q. Did you meet with him on the next day Tuesday?

21 A. My recollection is that he and I met on Monday, uh, I
22 think briefly at the courthouse. I think I may have gone over
23 to the jail and met with him some more Monday evening, um, I
24 would've spent time and that, you know, I don't remember if I
25 met with him on Tuesday, I know that the rec -- transcript

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 indicates I met with him on Monday, Wednesday, uh, and then
2 we'd met again that morning.

3 Q. Okay. One moment, Your Honor.

4 (Attorney/client conference held off the record.)

5 BY MR. MACPHAIL:

6 Q. Oh, uh, when the trial began, ---

7 A. Yes.

8 Q. --- were you aware at that time that he was facing a life
9 sentence?

10 A. Yes.

11 Q. Alright. So at the end of the trial in sentencing phase
12 when you said yes and no ---

13 A. Yes.

14 Q. --- you di -- were ---

15 A. Uh, ---

16 Q. --- you saying you didn't know all the trial or were you
17 saying you just knew, uh, but you were not served with the
18 notice?

19 A. Right, but the my my, the the Judge's question was, Had
20 Mr. Lyles and I been served with the notice to seek life
21 without parole. Yes, Mr. Lyles had been served the notice to
22 seek life without parole, I had not, Mr. Poole had been
23 served, so at the time that the notice of life without parole
24 was served, it was appropriately served on both the counsel of
25 record, the attorney of record, as well as, uh, the defendant

KATHLEEN HODGES - CROSS-EXAMINATION BY MR. MACPHAIL

1 himself, ---

2 Q. Alright.

3 A. --- uh, so but I had never been served and and and that
4 quite frankly my substitution in at that point I did not think
5 obviated the the, you know, the need for me to be served. I
6 mean, I I don't think that I necessarily had to been served at
7 that point. At the time the State served notice, they had
8 served counsel of record and Mr. Lyles.

9 Q. Alright. And did you, uh, consider filing motion for
10 continuance based on the kidnapping issue that it was such a a
11 late notice on that?

12 A. You know, I didn't, uh, and and I can understand, you
13 know, the applicant's concern about that, um, but I did not,
14 it was, uh, an issue that, uh, that he had been directly
15 indicted, uh, and because I knew about it when I started
16 preparing for it, it was something that that that I could deal
17 with in terms of of all those issues so . . .

18 Q. Alright. Uh, no further questions, Your Honor.

19 MS. WHITE: The State has nothing further, Your Honor.

20 THE COURT: Thank you.

21 THE WITNESS: Thank you.

22 THE COURT: May she be excused?

23 MS. WHITE: No objection, Your Honor.

24 THE COURT: Alright.

25 MR. MACPHAIL: No objection.

MOTIONS AND MATTERS

1 MS. WHITE: Your Honor, and the State has no other
2 witnesses.

3 THE COURT: Thank you. Alright, let me just tell ya, uh,
4 I I haven't read this transcript, I will -- I am concerned as
5 I believe counsel was that the, uh, that the first meeting
6 between, uh, trial counsel and defendant took place two days
7 before the trial, uh, I just don't know how you can meet the
8 minimum standards and that's what I'm asking at this point,
9 uh, I I'm gonna ask for a brief from the parties. I know you
10 don't, you got, wanted to say grace over so I'll give you
11 plenty a time for it ---

12 MS. WHITE: Thank Your Honor.

13 THE COURT: --- uh, but under *Lounds vs. the State*, 670
14 southeast 2nd 646 I believe, uh, what in record there is to
15 show that the minimum that is required is met and on the same
16 side d -- I assume, Mr. MacPhail, you wanna argue how the
17 minimum was not met but that's what I'm lookin' for.

18 Uh, several issues out there that a a chain a custody
19 issue is not i -- it's a non-issue and I'm denying your
20 petition on that.

21 The, uh, mention of LWOP to the jury you have no right to
22 do -- have that and I'm denying your petition on that.

23 Your allegations against, uh, appellate counsel, uh, let
24 me go back. With regar -- was that that they did not address
25 the miscond of the judge you sa -- the three things you said

MOTIONS AND MATTERS

1 misconduct trial judge in failure to grant change of venue,
2 uh, that is denied, misconduct trial judge arraignin', uh,
3 defendant day of trial that is denied and, uh, misconduct the
4 trial judge in not goin', not givin' time to prepare. Uh,
5 I'll note for the record there's no continuance request and
6 that to the extent Ms. Hodges was brought on the case she was
7 given time to prepare so it's -- your, uh, petition is denied
8 on those grounds as well.

9 Uh, the exhibits that were submitted, uh, Exhibit 1 the
10 independent investigative report, the affidavit and photograph
11 of identification, uh, is denied, it doesn't -- you have
12 failed to show how that would would affected the outcome a
13 this case and that therefore, uh, order the client -- the
14 counsel was deficient in lettin' those or not puttin' those
15 in. It looks to me and I want Mr. MacPhail to correct me that
16 the only real issue is the failure to properly investigate
17 resulting ineffective assistance of counsel, is that your --
18 there other issues that I haven't ruled on already that I need
19 to consider?

20 MR. MACPHAIL: I'm not sure if I misunderstood but did
21 you address the, uh, the issue with appellate counsel 'cause
22 he only briefed the one issue.

23 THE COURT: Yeah, I said the the the three things ---

24 MR. MACPHAIL: That's denied?

25 THE COURT: --- that was brought out by, uh, Mr. Lyles

MOTIONS AND MATTERS

1 was alleged that three events of misconduct of judge, the
2 trial judge, that shoulda been addressed by appellate counsel
3 and I went over those: change of venue, arraignin' the day of
4 the trial and, uh, not givin' time to prepare, those are three
5 things I wrote down.

6 MR. MACPHAIL: Alright.

7 THE COURT: Uh, I I didn't hear any other allegations
8 about appellate counsel so I'm denyin' that so so,
9 Mr. MacPhail, as we're here today based on what I've already
10 decided what I've asked you to brief, are there any other
11 issues that need to be considered?

12 MR. MACPHAIL: It it sounds to me like you've addressed
13 them all, that's it, Your Honor.

14 THE COURT: Thank you, sir. Uh, ---

15 MS. WHITE: I I did, uh, and I don't know if this is kind
16 of lumped in, I think, uh, the allegation of failure to offer
17 mitigation during sentencing was one and overall a conflict of
18 interest so I'm not sure how that kind of gets lumped in,
19 those were brought up at the beginning as the actual
20 ineffective assistance of counsel issues.

21 THE COURT: Right, uh, I'm gonna deny your motion on
22 conflict of interest, uh, I I don't see any conflict, I know
23 you didn't like Mr. Poole but I don't think that constitutes a
24 conflict of interest. The fact that Ms., uh, Hodges came in
25 outta the same technical firm would not constitute a conflict

MOTIONS AND MATTERS

1 of interest in my view so I'm deny your petition on that
2 grounds, uh, I'll a -- I guess the failure to mitigate or
3 offer mitigation would go into the, uh, preparation claim ---

4 MS. WHITE: Okay.

5 THE COURT: --- so if you'd address that in that regard,
6 also I assume that you're requesting SLED investigation as
7 well. Uh, other than that I think we've covered the issues in
8 this matter and if I'm wrong, if if if you loo -- get in there
9 and you see that we hadn't done it through any hearin', please
10 address in the brief, let the other side know that you're
11 goin' to so they can and and I'd appreciate that ---

12 MR. MACPHAIL: Thank you.

13 THE COURT: --- but I appreciate ---

14 MS. WHITE: Thank you.

15 THE COURT: --- your preparation, uh, both of ya and, uh,
16 how long do you think you need, I I'm not gonna hold you to it
17 too hard.

18 MS. WHITE: I'd I'd like to start with thirty days just
19 because I know we've got a ---

20 THE COURT: Alright.

21 MS. WHITE: --- number of, uh, orders to do from this
22 term.

23 THE COURT: The reason I just wanna know is my law
24 clerk's gonna write it down, ---

25 MS. WHITE: Okay.

MOTIONS AND MATTERS

1 THE COURT: --- aren't ya?

2 THE LAW CLERK: Um-hum, ---

3 THE COURT: Yeah.

4 THE LAW CLERK: --- already did.

5 THE COURT: Yeah, then we're gonna make sure that we
6 check back up ---

7 MS. WHITE: Okay.

8 THE COURT: --- and and hopefully if you need --- Mr.
9 Mac -- Mr. MacPhail, that ---

10 MR. MACPHAIL: Yes.

11 THE COURT: --- work with you?

12 MR. MACPHAIL: Yes, Your Honor.

13 THE COURT: Okay, very good.

14 MS. WHITE: Alright.

15 THE COURT: Thank you.

16 MS. WHITE: Thank Your Honor.

17 THE COURT: Done with this hearing.

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1 CERTIFICATE OF REPORTER

2
3 I, Margaret A. Woods, Court Reporter in and for the State
4 of South Carolina at Large, hereby certify that I reported the
5 preceding case on June 26, 2013 at the time and place
6 heretofore set forth; and that the foregoing pages numbered
7 from 4 through 84, inclusive, constitute a true and accurate
8 transcription of my stenographic notes of the said proceeding.

9 I further certify that I am neither attorney nor counsel
10 for, nor related to or employed by any of the parties
11 connected to the action, nor am I financially interested in
12 the action.

13 May 28, 2014

14
15 Margaret A. Woods

16 Margaret A. Woods, Court Reporter
17 in and for the State of South Carolina at Large.
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(10/23/09) : 000009



Spartanburg County Sheriff's Office

CHUCK WRIGHT, SHERIFF

AFFIDAVIT OF PHOTOGRAPH IDENTIFICATION

Case Number: 2009.030303Date: 3-7-09Time: 23:00 (11:00)Location: Sheriff's Office CID

I, Amy Dawn Sandifer, have viewed a group of 6 photographs this 7 day of March, 2009, from which I have positively identified photograph number 1598962 displayed to me by Lorin W. Williams of the Spartanburg County Sheriff's Office as the person who stopped his truck, got out with 40oz beer bottle and came after me, pushed me into ditch, swung beer bottle and hit me in the head with beer bottle, hit me in the nose with hand, drug me into woods by neck of T-shirt. He then took my ^{wedding} rings and iPod, then drove off. on the 7th day of March, 2007.

Signature: Amy SandiferPrint Name: Amy SandiferAddress: Campobello SC 29322

Phone: _____

SWORN to before me this 7th day of March, 2009.

[Signature]
Notary Public for South Carolina

My commission expires: 8-22-10

P.O. Box 771 * Spartanburg, SC 29304 * (864) 503-4500 * (864) 503-4509

6-26-2013

(10/23/09) : 00003

SPARTANBURG COUNTY SHERIFF'S OFFICE		
INVESTIGATION REPORT		
SC0420000	TYPE: ☐ PRELIMINARY ☐ CONTINUING	CASE: # 2009030303
INCIDENT TYPE: Armed Robbery		VICTIM: Amy Sandifer
LOCATION: Rainbow Lake @ Ridings Rd.		

On 3/7/09 at approximately 6:30 pm, I was notified in regards to the robbery at Rainbow Lake involving the victim Sandifer. I arrived on the scene and spoke with a victim, Amy Sandifer. She advised me that she was walking down Rainbow Lake when a black male stopped in a maroon, she described as maroon newer model pickup truck. She stated that he was wearing a lighter colored shirt and un-descriptive on the pants that was worn. She also advised me that he pulled up beside her and began to ask her for directions and road names. She stated that those road names did not exist. He then pulled up and got out of the truck, pushed her down in the ditch and demanded her valuables and began to try to drag her up towards the wood area. She stated that she was able to fight back and get to the side of the road area. She then advised me that she gave him her wedding ring and her engagement ring and her IPOD shuffle that was blue in color. She stated that the suspect had struck her with the palm of his hand and with a beer bottle, what she described as a large beer bottle.

Upon my arrival, on scene were Deputy Tate and Deputy Dukes. The tag provided by the victim was 4588AB, which came back to a Mark Anthony Smith at 242 Hummingbird Lane, Chesnee. I responded to 242 Hummingbird Lane. No one was at the residence.

At approximately 8:20 pm, I responded to a residence on Roper Road in Inman. Upon arriving at the residence, I spoke with a source of information. *Tom Sandifer* Noel had picked him up in front of the Blue Orchid and he had told him about the incident that had occurred at the Spartanburg Regional Medical Center. He stated that he got this burgundy, what he described as a burgundy truck with a toolbox on the back from a carwash. He then advised the possible location where Noel Lyles may be.

Applicant's
2
1-26-13 (W)

(10/23/09) 00004

I then responded to Street after a communication call had come in regards to the suspect being at the residence. While there I was advised that a Municipality Unit had the suspect stopped on Rogers Road.

Upon my arrival, I was met the Officers and Officer Burrell was advising Mr. Lyles of his Miranda Rights from a pocket card. I then stood Mr. Lyles up and began to pat him down. In his right front pocket was a blue IPOD that was described to me by the victim and under the drivers seat in the front area was a wedding band and under the drivers seat in the rear area was an engagement ring that was described to me by the victim husband.

At approximately 10:50 pm, I began to interview Mr. Lyles at the Spartanburg County Sheriffs Office. While at the Sheriffs Office, I walked in along with Inv. Taylor and Lyles had advised me that he had already been read his rights and he requested his attorney. I then began to speak with Mr. Berry. I advised him of his rights from a Pre-Interrogation Waiver Form and he provided me with a Voluntary Statement.

INVESTIGATOR: Jason Bryant	DATE: 3/9/09
APPROVING OFFICER:	DATE:
Typed by: Tawane Johnson	Date: 3/9/09

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Noel Michael Lyles,
Applicant,

vs.

State of South Carolina,
Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO.: 2012-CP-42-1955

MEMORANDUM OF LAW
With reference to Lounds v. State

PURPOSE OF BRIEF

This litigation arises out of an application for post-conviction relief filed by the Applicant, asking that the verdict in the underlying case be set aside due to, *inter alia*, ineffective assistance of counsel. At the close of the hearing on Petitioner's application for post-conviction relief on June 26, 2013, The Honorable R. Lawton McIntosh asked each party to submit a brief as to how Petitioner's counsel's admitted lack of preparation for the trial was or was not grounds for the petition for post-conviction relief in light of the precedent set by Lounds v. State, 380 S.C. 454 (2008).

QUESTIONS PRESENTED

- 1) Was Petitioner's counsel at trial ineffective for inadequate preparation, such that Lyle's Petition for Post-Conviction Relief should be granted under the precedent of *Lounds v. State*?

BRIEF ANSWER

The petition for post-conviction relief of Anthony Lounds was granted in *Lounds v. State*, when it was shown that his attorney failed to properly prepare for trial.

Here, in Lyles' criminal trial, Petitioner's initial counsel's preparation was also clearly inadequate. He failed to do any independent investigation, and didn't even meet with his client until the last business day before trial, despite ample notice that his client was facing a

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M. HOPKINS BLACKBERRY
CLERK OF COURT
SPARTANBURG COUNTY

mandatory life sentence if convicted. Then, when additional counsel from the initial counsel's law firm agreed to serve as co-counsel, she only had a few days to catch up on the facts of the case. The source of her information on the case was the Petitioner in just two or three meetings, Petitioner's initial counsel, the case file and discovery responses. Co-counsel did not interview witnesses, visit the scene of the crimes, or otherwise conduct an independent investigation. Her preparation was thus also inadequate, deficient and prejudicial.

Petitioner argues that without the independent investigation to be reasonably expected by counsel, and in light of Petitioner's not guilty verdict on the kidnapping charge, there exists a reasonable probability sufficient to undermine confidence in the outcome of the trial and Lyles' convictions based upon failure of counsel to interview witnesses, conduct an independent investigation, visit the scene of the crimes, call eyewitness Liza Bryant to the stand whose sworn statement contradicts the other eyewitnesses who testified, or even interview her to determine whether their testimony would have been effective on behalf of the defense, and failure to collect and review the hospital records of the victim to show that her statements were erroneous and impeach her credibility, all of which would have led the finder of fact to have had a reasonable doubt respecting guilt.

LEGAL ANALYSIS

Legal Precedent: In order to prove counsel was ineffective, the PCR applicant must show: (1) counsel's performance was deficient; and (2) there is a reasonable probability that but for counsel's errors, the result of the trial would have been different. *Lounds v. State*, 380 S.C. 454, 459 (2008), citing *Strickland v. Washington*, 466 U.S. 668 (1984).

A criminal defense attorney has a duty to perform a reasonable investigation. *At v. Catoe*, 372 S.C. at 331. While the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case. *Id.* At 331-32.

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COUNTY

A successful petitioner for PCR must also satisfy the second prong of the required analysis under *Strickland v. Washington*, 466 U.S. 668 (1984) and *Rhodes v. State*, 349 S.C. 25 (2002). Petitioner must show that there is a reasonable probability that, but for counsel's errors, the result of the trial would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. *Id.* When a defendant's conviction is challenged, the question is whether there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt. *Ard v. Catoe*, at 331.

Summary of *Lounds v. State*: The court in *Lounds v. State* granted the petition of Lounds for post-conviction relief where the Petition's trial counsel (1) had ample notice Lounds was facing LWOP; (2) trial counsel informed the court that he had only found out the names of the Defendant's witnesses on the morning of the trial, (3) counsel failed to interview or subpoena any of Defendant's witnesses prior to trial; and (4) met with his client only once, on the morning of trial. Further, the court found that there was a reasonable probability that trial counsel's lack of such preparation, along with the fact that Defendant was found not guilty on one of the charges, created a reasonable likelihood of a different outcome had the proper preparation been done by counsel.

Lounds and Lyles Compared: The circumstances at trial of Lyles and Lounds are strikingly similar. In Lyles, counsel was timely served with the notice of state's intent that if convicted, Lyles would serve a mandatory life sentence due to his prior record. Despite ample notice of the serious consequences to Lyle of the outcome of this trial, attorney Poole admitted at trial and at the PCR hearing that he failed to even meet with his client until the last business day prior to trial (Friday for a Monday trial). Poole admitted at the PCR hearing that he did not do any independent investigation, did not interview any witnesses, did not go to the scene of the crimes, did not subpoena the victim's medical records, and in general failed to do any trial preparation other than review the discovery responses of the State and meet with his client once

on the day prior to trial. He did not provide his client with the discovery materials until he met with his client the last business day before trial.

Co-Counsel: When attorney Hodges agreed to serve as lead counsel/co-counsel with Poole, she only had a few days to prepare for the trial. According to her testimony at the PCR hearing, her preparation during the next several days prior to trial included meeting with the client a few times, meeting with attorney Poole, and reviewing the discovery material. Hodges, just like Poole, failed to conduct an independent investigation, failed to go to the scene of the crimes and failed to interview witnesses, including the witness Liza Bryant, (whose statement appeared on its face to contradict the statements of the other witnesses and the victim by the fact she could see that there was no weapon, no armed robbery and no kidnapping, but just an argument), and failure to subpoena the medical records of the second victim to show her memory was faulty as to the sequence of events on the day of her identification, and therefore could be impeached on other matters like her identification of the Defendant as the perpetrator.

Likelihood of a different outcome: Lyles was found not guilty of kidnapping, just as Lounds who was found not guilty on one of charges, the armed robbery charge, indicating that the jury had questions about the State's case. There were serious problems with the State's case, including identification issues with both victims, adverse publicity during the identification process, a lack of any weapon (bottle) found at the scene, and concerns about a rush to judgment on the behalf of law enforcement since the second victim was the wife of a law enforcement officer. There had never been an independent investigation of this matter; SLED was never brought in despite the victim being the wife of a law enforcement officer. Counsel's motion to change venue was never ruled on despite the media coverage that impacted the identification of the suspect. There was very little corroboration of each witness' testimony, and the undermining of a witness' credibility on one identification or on one issue would likely have resulted in a

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different verdict. Counsel could have created additional doubt on behalf of the defendant stemming from Ms. Bryant's testimony (i.e., no weapon, no robbery, no kidnapping, just an argument); from medical records of the second victim to create further doubt about her identification of the suspect based upon her confusion about the sequence of events on the day of the identification (See *Tucker v. Prelesnik*, 181 F.3d 747 (6th Cir. 1999), where trial counsel's failure to obtain a victim's medical records was deficient representation and would likely have created reasonable doubt); from the evidence and statements that could have been collected during an independent investigation. All of the above creates the reasonable likelihood that the result of the trial would have been different had proper preparation occurred.

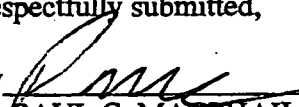
CONCLUSION

Lyles deserved a reasonable investigation, especially when faced with a life sentence if convicted. As one court stated, "...we must condemn the conduct of this court-appointed lawyer. Whether a lawyer is employed by a prosperous defendant at a handsome fee or serves an indigent without compensation in the discharge of the duty resting upon him as an officer of the court, the canons of our profession require his 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.' American Bar Association, Canons of Professional Ethics, Canon 15. *Turner v. State of Maryland*, 318 F.2d 852, 854 (4th Cir. 1963).

At a minimum, Lyles deserved to have the lawyer appointed to represent him interview potential witnesses and make an independent investigation of the facts and circumstances of the case, as required under *Ard v. Catoe* and *Lounds v. State*. The Petitioner Lyles is entitled to the post-conviction relief requested, and is entitled to a new trial.

Respectfully submitted,

By


PAUL C. MACPHAIL

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181 F.3d 747 (6th Cir. 1999), 98-1343, Tucker v. Prelesnik

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181 F.3d 747 (6th Cir. 1999)

David Tucker, Petitioner-Appellee,

v.

John Prelesnik, Respondent-Appellant.

No. 98-1343

United States Court of Appeals, Sixth Circuit

June 10, 1999

Argued: March 9, 1999

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Appeal from the United States District Court for the Eastern District of Michigan at Detroit.
No. 96-73088--Denise Page Hood, District Judge.

COUNSEL ARGUED: Janet A. Van Cleve, OFFICE OF THE ATTORNEY GENERAL,
HABEAS CORPUS DIVISION, Lansing, Michigan, for Appellant.

David A. Moran, STATE APPELLATE DEFENDER OFFICE, Detroit, Michigan, for Appellee.

BECKWITH, D. J., delivered the opinion of the court, in which GILMAN, J., joined. SILER, J.
(pp. 19-21), delivered a separate dissenting opinion.

Before: SILER and GILMAN, Circuit Judges; BECKWITH, District Judge. [*]

OPINION

SANDRA S. BECKWITH, District Judge.

In 1992, Petitioner-Appellee David Tucker was convicted of assault with intent to do great bodily harm after a state court bench trial lasting less than one hour. The trial judge sentenced him outside the zero to 24-month range prescribed by the applicable sentencing guidelines, to a term of six to ten years of imprisonment. Petitioner-Appellee Tucker has now served his sentence and is on parole.

Mr. Tucker appealed his conviction and sentence as of right and argued that he had received ineffective assistance of counsel. The state appellate court remanded the case to the trial judge for a hearing, known as a Ginther hearing in Michigan, on Mr. Tucker's claim of ineffective assistance. The trial judge denied Mr. Tucker's claim. The Michigan Court of Appeals affirmed Mr. Tucker's conviction and sentence in a brief unpublished opinion, and the Supreme Court of Michigan, in an evenly divided vote, denied Mr. Tucker's application for leave to appeal. See *People v. Tucker*, 450 Mich. 889 (1996).

On July 8, 1996, Mr. Tucker filed a petition for writ of habeas corpus in the district court. On August 29, 1997, that court issued the writ. The district court held that Mr. Tucker had been deprived of the effective assistance of counsel at trial by virtue of his trial counsel's failure to obtain the medical records of the complainant, who was the only witness at trial. The district court concluded that Mr. Tucker was prejudiced by his trial counsel's failure in that regard, inasmuch as the complainant's medical records cast serious doubts upon his trial testimony and the quality of

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his memory. The district court finally concluded that the state courts had unreasonably applied the Supreme Court's standard for relief under the Sixth Amendment based upon the ineffective assistance of counsel. The district court denied Respondent-Appellant's motion for reconsideration on February 6, 1998, and this appeal followed.

I. BACKGROUND

In June 1990, both Petitioner-Appellee Tucker and Anthony Henderson were employees
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of a McDonald's restaurant in Detroit, Michigan. On June 30, Mr. Henderson was attacked and severely beaten in or near the men's restroom of the restaurant. Mr. Henderson suffered a closed-head injury and was rendered unconscious. Petitioner-Appellee Tucker reported Mr. Henderson's injury to the restaurant manager on duty, who instructed Mr. Tucker to call 911.

The victim of the assault, Anthony Henderson, remained comatose in a Detroit hospital for an extended period of time after the assault. The medical records of his hospitalization indicate that he was comatose for a period of one month, that he was speaking coherently two to four months after the assault, and that he did not have any broken ribs.

The Detroit Police initially brought charges against two individuals other than Petitioner-Appellee for the assault on Anthony Henderson. Not until April 1991, ten months after the assault, did Anthony Henderson indicate to the Detroit Police that he believed that Mr. Tucker was involved in the assault. For reasons that are not entirely clear from the record, the prosecutor eventually decided to pursue charges against Petitioner-Appellee Tucker only.

A few weeks prior to trial, Mr. Tucker's trial counsel received a letter from Anthony Henderson's workmen's compensation attorney. The attorney stated that Mr. Henderson was "unable to testify with specificity as to the identity of the individuals who assaulted and severely beat him." Appendix, p.65. The attorney further "advised that Mr. Henderson is not in any way agreeing not to testify against David Tucker." Id. Mr. Tucker's attorney nevertheless took the letter as indicating that Anthony Henderson would not testify at Mr. Tucker's trial. He did nothing to prepare for the trial.

When the trial began, and Mr. Tucker's counsel learned that Anthony Henderson would testify, counsel did not request a continuance. Anthony Henderson was, in fact, the prosecution's only witness. He testified that Mr. Tucker pushed him into the restroom where Robert Wiley and an unknown man assaulted him. Mr. Henderson also testified that he had been comatose for a period of six months after the assault, that he had been unable to speak to the police for a period of nine months, and that all of his ribs had been broken in the attack.

Mr. Tucker also testified. He denied any involvement in the assault on Anthony Henderson. His counsel represented to the trial judge that Mr. Henderson's medical records would show that he had no memory of the assault. Counsel did not have the records, however, and could not introduce them. The trial judge convicted Petitioner-Appellee Tucker of assault with intent to do great bodily injury.

At the sentencing hearing, Anthony Henderson made a victim impact statement in which he stated that he had been comatose for a six-month period after the assault and that he had been unable to speak for an additional three-month period. He stated that his assailants had broken all

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of his ribs. The trial judge deviated from the applicable sentencing guideline and imposed a term of six to ten years of imprisonment.

On remand from the Michigan Court of Appeals for consideration of Mr. Tucker's claim of ineffective assistance of counsel, the trial court heard testimony from the investigating police officer that Anthony Henderson had initially identified Robert Wiley as the man who pushed him into the restroom. The trial judge stated that evidence of Mr. Henderson's initial statements was not relevant.

Mr. Tucker also presented the testimony of his trial counsel, Robert Nelson, concerning the letter he received from Mr. Henderson's workmen's compensation attorney shortly before trial. The trial judge indicated that he believed that the contents of the letter regarding Mr. Henderson's state of mind were hearsay

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and of no evidentiary value. Mr. Nelson testified that he had not been aware that Mr. Henderson had initially identified Robert Wiley, rather than Mr. Tucker, because he had trusted the prosecution to provide him with relevant documents and he had not requested police investigation reports. After Mr. Nelson testified that he did not attempt to impeach Mr. Henderson with his statement to his workmen's compensation attorney because he believed the statement to be hearsay, the trial judge terminated the Ginther hearing. The judge denied Petitioner-Appellee Tucker's motion for a new trial and stated that the Ginther hearing had been an "academic irrelevancy."

Several weeks after the Ginther hearing, Mr. Tucker's appellate counsel received Mr. Henderson's medical records. Counsel moved to reopen the Ginther hearing on the ground that the medical records demonstrated that Mr. Henderson had testified falsely at Mr. Tucker's trial.

At a January 8, 1993 hearing, appellate counsel made an offer of proof of the medical records. The trial court permitted counsel to read portions of the records into the record and to argue concerning their import. The trial judge then engaged in the following dialog with appellate counsel:

THE COURT: I saw the trial. I heard the witnesses. I believed the complainant. Those records that you brought in here today prove absolutely nothing at all. Nothing. Absolutely nothing. I saw the terrible injuries that this man sustained.

Now I know there was no robbery. I knew that the only reason this fight started was that there was an argument over getting off or changing a shift or something, and that this man was hit over the head; he was put in the hospital. He cannot walk. He's having trouble walking.

MR. MORAN: There's no dispute about that, Your Honor.

THE COURT: I don't care how long he was in a coma, it doesn't make any difference.

MR. MORAN: Your Honor, don't you think that impacts his memory?

THE COURT: Let the Court of Appeals handle that. The man is guilty. You can bring up the records in you want, that hasn't changed one thing, except all it's done to me is make me even more convinced than I was before. How in the world could there be a difference? We know a person in a coma for one month, how would you like to be in a coma for two days? He was in a coma for 40, 30 days.

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On appeal, the Michigan Court of Appeals, citing Michigan case law based upon *Strickland v. Washington*, 466 U.S. 668 (1984), concluded that Mr. Tucker had failed to show that, but for the claimed error, he would have had a reasonable chance of acquittal. That court also concluded that Mr. Tucker had failed to show prejudice of any kind resulting from his trial counsel's lack of preparation. On those bases, the Michigan Court of Appeals affirmed the trial court's denial of the motion for a new trial. By a divided vote, the Michigan Supreme Court denied Mr. Tucker's motion for leave to appeal.

On July 8, 1996, Mr. Tucker filed a petition for writ of habeas corpus in the district court. Mr. Tucker asserted a claim of ineffective assistance of counsel in violation of the Sixth Amendment. He asserted, specifically, that he was deprived of the effective assistance of counsel by virtue of his attorney's failure to prepare for trial or seek a continuance when he learned that Anthony Henderson would testify; failure to obtain Mr. Henderson's medical records and to use those records to impeach Mr. Henderson at trial; failure to obtain police reports indicating that Mr. Henderson had initially implicated Robert Wiley, rather than Mr. Tucker, as the

person who pushed him into the restroom; failure to use the letter from Mr. Henderson's workmen's compensation attorney to impeach Mr. Henderson; and other asserted failures.

The district court granted the petition. Applying the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), the court concluded that Petitioner-Appellee Tucker was deprived of the effective assistance of counsel by virtue of his trial counsel's failure to obtain Anthony Henderson's medical records before trial. Interpreting 28 U.S.C. 2254(d) in the manner outlined by the United States Court of Appeals for the Fifth Circuit in *Drinkard v. Johnson*, 97 F.3d 751, 767-68 (1996), cert. denied, 520 U.S. 1107 (1997), the district court concluded that a "reasonable trier of fact--jury or judge--could find differently than" the state court trial judge. Memorandum Opinion and Order, p. 18. Respondent-Appellant appeals from the district court's Opinion and Order.

II. THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996

The Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 (1996) ("AEDPA"), applies in this case inasmuch as Petitioner-Appellee Tucker filed his petition for writ of habeas corpus after the AEDPA's effective date of April 24, 1996. See *Harpster v. Ohio*, 128 F.3d 322, 326 (6th Cir. 1997), cert. denied, ___ U.S. ___, 118 S.Ct. 1044 (1998). Pursuant to the amendments to 28 U.S.C. 2254(d) effectuated by the AEDPA, a writ of habeas corpus may not be granted unless the state court proceedings

- (1). Resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2). Resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

Several other circuits have interpreted 2254(d) in light of the amendments to that statute resulting from the enactment of the AEDPA. In a very recent decision, this Court discussed the interpretations of the various circuit courts in articulating a standard to be applied to cases arising in this circuit. See *Nevers v. Killinger*, 169 F.3d 352 (6th Cir. 1999).

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The Nevers court first made note of the two disjunctive phrases, "was contrary to" and "involved an unreasonable application of", in 2254(d)(1). The court discussed the approaches of the various circuit courts that have addressed the "was contrary to" portion of the statute. Under any approach, the Nevers court concluded, the claim before it was not a claim that the state court's decision was contrary to clearly established Federal law. Accordingly, the court did not decide which of the varying interpretations of the first phrase in 2254(d)(1) it preferred. See *Nevers*, 169 F.3d at 361.

Likewise, we conclude that Petitioner-Appellee Tucker's ineffective assistance of counsel claim does not arise under the "was contrary to" phrase of 2254(d)(1). Mr. Tucker does not assert that the facts before the state trial court at his Ginther hearing were "essentially the same as those the Supreme Court has faced earlier" and that the state court reached a result different than that reached by the Supreme Court. Neither does he assert that the state courts failed to apply the correct legal standards. See *Neelley v. Nagle*, 138 F.3d 917, 923 (11th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 811 (1999). Similarly, this case does not involve "a decision of pure law or the application of law to facts indistinguishable in any material way from those on the basis of which the precedent

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was decided. . . ." *Green v. French*, 143 F.3d 865, 870 (4th Cir. 1998), cert. denied, ___ U.S. ___, 119 S.Ct. 844 (1999). See also *Nevers*, 169 F.3d at 361. Accordingly, our analysis is limited to the "unreasonable application" phrase in 28 U.S.C. 2254(d)(1).

As the Nevers court noted, the lack of agreement among the circuits with regard to the meaning and application of the term "unreasonable application" is sharp. See *Nevers*, 169 F.3d at 361. "[A]ll the cases appear to agree that 'the "unreasonable application" clause does not empower a habeas court to grant the writ merely because it disagrees with the state court's decision, or because, left to its own devices, it would have reached a different result.'" *Id.* (quoting *O'Brien v. Dubois*, 145 F.3d 16, 25 (1st Cir. 1998)). The Nevers court noted that the various circuit courts that have considered the meaning of the "unreasonable application" phrase do not agree upon what a district court must find in order to issue the writ. See *Nevers*, 169 F.3d at 361.

After reviewing decisions from the various circuits, the Nevers court settled on the standard enunciated by the First Circuit in *O'Brien*. Pursuant to that standard, a district court may issue the writ under the "unreasonable application" phrase of 28 U.S.C. 2254(d)(1) if it concludes that the state court decision was "so offensive to existing precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes." *Nevers*, 169 F.3d at 361 (quoting *O'Brien*, 145 F.3d at 25). The Nevers court observed, however, that, in *Herbert v. Billy*, 160 F.3d 1131 (6th Cir. 1998), another panel of this court expressed its agreement with the "reasonable jurist" approach taken by the Fifth Circuit in *Drinkard v. Johnson*, 97 F.3d 751, 767-68 (1996), cert. denied, 520 U.S. 1107, 117 S.Ct. 1114 (1997).

The Nevers court harmonized the two approaches, even though it recognized that the First Circuit had specifically rejected *Drinkard's* "reasonable jurist" approach in *O'Brien*, 145 F.3d at 25 n. 7. Crediting both the First and Fifth Circuits, the Nevers court stated that

[t]he deference to the state courts' judgments required by the AEDPA is achieved by adopting

the rule that the unreasonableness of a state court's application of clearly established Supreme Court precedent will not be "debatable among reasonable jurists," *Drinkard*, 97 F.3d at 769, if it is "so offensive to existing precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes," *O'Brien*, 145 F.3d at 25.

Nevers, 169 F.3d at 362. In this circuit, therefore, the writ will issue if the unreasonableness of the state court's application of clearly established precedent is not debatable among reasonable jurists. The unreasonableness of the application will not be debatable if it is so offensive to the precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes. We will apply that standard to determine whether the district court below erred in granting the writ to Petitioner-Appellee Tucker.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

The district court granted the writ on Petitioner-Appellee's claim of ineffective assistance of counsel. Specifically, the district court concluded that Petitioner was deprived of the assistance of counsel as guaranteed by the Sixth Amendment to the United States Constitution by virtue of his trial counsel's failure to obtain Anthony Henderson's medical records and to use those records to impeach Mr. Henderson at trial. We review *de novo* the legal conclusions underlying the district court's decision to grant the writ under 2254, and we review its findings of fact for clear error. See *DeLisle v. Rivers*, 161 F.3d 370, 380 (6th Cir. 1998).

In *Strickland v. Washington*, 466 U.S. 668 (1984), the Supreme Court considered for the first time a claim of actual ineffectiveness of counsel's assistance. The Court noted that "the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial." *Id.* at 684. The Supreme Court had previously recognized that the Sixth Amendment guarantees "the effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n. 14 (1970). Prior to its decision in *Strickland*, however, the Court had not elaborated on the meaning of the effective assistance requirement. See *Strickland*, 466 U.S. at 686.

In *Strickland*, the Supreme Court established that the "benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Id.* The Court enunciated two components of a claim that counsel's assistance was sufficiently defective to require reversal of a conviction:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the "counsel" guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Id. at 687.

The *Strickland* Court confirmed that "the proper standard for attorney performance is that of reasonably effective assistance." *Id.* In order to prove ineffectiveness, therefore, a defendant must demonstrate that his counsel's representation fell below an objective standard of reasonableness. *Id.* at 688. "A fair assessment of attorney performance requires that every effort be made to

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eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Id.* at 689. Accordingly, a court considering a claim of ineffective assistance must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." *Id.* The defendant bears the burden of overcoming the presumption that the challenged action might be considered sound trial strategy. See *id.* (citing *Michel v. Louisiana*, 350 U.S. 91, 101 (1955)). The court must determine whether, in light of the circumstances as they existed at the time of counsel's actions, "the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690.

Even if a court determines that counsel's performance was outside that range, the defendant is not entitled to relief if counsel's error had no effect on the judgment. See *id.* at 691. "The purpose of the Sixth Amendment guarantee of counsel is to ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding." *Id.* at 691-92. Accordingly, "any deficiencies in counsel's performance must be prejudicial to the defense in order to constitute ineffective assistance." *Id.* at 692. The *Strickland* court enunciated the following more precise test for prejudice:

The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a

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probability sufficient to undermine confidence in the outcome.

Id. at 694.

At the Ginther hearing in the Michigan trial court, Mr. Tucker's appellate counsel offered medical records that reflected upon Anthony Henderson's ability to remember the assault and suggested that effective counsel would have introduced the records, and perhaps expert testimony concerning the records, to impeach Mr. Henderson. The trial judge responded as follows:

I don't care how many experts you bring in to say this man couldn't remember anything, he was in here in that chair testifying in court and naming names and pointing at people. I don't really think that this really amounts to ineffective assistance of counsel. What it really amounts to is if I were the lawyer, this is what I would have done. And it's much easier to do that after the affair is over than at the time.

Now, what would impress the jury and what would have impressed the court, since I think this was a waiver trial? Wouldn't have been the testimony of an expert, but the testimony of the witness who was there. So, I'm not going to grant that and I don't think that rises to the level of Ginther, only rises to the level of this is what I would have done.

The court engaged in the following colloquy with Mr. Tucker's appellate counsel concerning the same topic:

THE COURT: But this man, this man's testimony was quite -- it was quite clear about what he said happened and he didn't -- he seemed to me to know what he was talking about.

MR. MORAN: Your Honor, the suggestion we made is that if you had heard all of the prior wildly different things he had said and then had an expert explain to you why people don't

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remember things after they have been in a coma for six months.

THE COURT: Yes, but that's impeachment. I did not hear that. If he told somebody else that outside of the court and that's being brought up now, how would I know about it? I can only determine the case by what I hear in the courtroom. But I don't know what he might have said to someone. I assume all of the witnesses were here.

While the trial judge did not make specific reference to Strickland, he referred to both of the components of a claim of ineffective assistance of counsel enunciated by the Supreme Court. First, he implied a conclusion that Mr. Tucker's trial counsel's performance was not deficient when viewed from the perspective of counsel at the time, rather than in hindsight. Then, he suggested that any error by Mr. Tucker's trial counsel did not affect the outcome of trial inasmuch as the trial court was only concerned with what the victim said on the stand. While the trial court's articulation of the constitutional standard was less than clear, we are not persuaded that the court applied the incorrect legal standard.

Likewise, the Michigan Court of Appeals, in consideration of Mr. Tucker's appeal from the trial court's decision, explicitly applied the standard enunciated in Strickland. That court, after articulating the standard, stated simply that Mr. Tucker had "failed to show prejudice of any kind resulting from counsel's alleged lack of preparation." The issue before the district court, and before us on appeal, is whether the trial court made an unreasonable application of the Strickland standard.

Having reviewed the performance of trial counsel in Mr. Tucker's case, we are persuaded that the unreasonableness of the state courts' application of Strickland is not debatable among reasonable jurists. While the district court granted the writ specifically with regard to Mr. Tucker's

claim based upon counsel's failure to obtain and use medical records at trial, we consider that deficiency in conjunction with counsel's failure to request a continuance when he learned that Anthony Henderson would testify at trial and his failure to obtain and use evidence of earlier, contradictory statements by Mr. Henderson concerning the assault. Petitioner-Appellee Tucker raised each of those failures by his trial counsel as a ground for relief before the district court.

Counsel, unprepared and assuming that the prosecution would present no evidence against his client, nevertheless declined to request a continuance to prepare. His failure to do so, when he knew that he was unprepared for trial and had not obtained critical evidence of which he was aware, could not be considered representation within the "wide range of reasonable professional assistance." See Strickland, 466 U.S. at 689. Indeed, Petitioner-Appellee Tucker's burden of overcoming the presumption that the challenged action might be considered sound trial strategy is not a difficult one in this case. No conceivable sound trial strategy would include a decision to proceed unprepared when counsel has learned that his assumption that the prosecution would not present evidence was unfounded.

The same is true of Mr. Tucker's trial counsel's failure to obtain Anthony Henderson's medical records prior to trial and to use the records to impeach Mr. Henderson. To the extent that Mr. Henderson's medical records could be used to demonstrate that his memory concerning the assault was faulty, particularly when considered together with evidence of his varying versions of

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the assault, counsel's failure to obtain those records could not have been part of a sound trial strategy. Rather, as Mr. Tucker's trial counsel conceded at the Ginther hearing, he had no trial strategy. He believed, until the trial began, that the prosecution would not present evidence. Accordingly, he perceived no reason to prepare a strategy for trial. We conclude that his failure to request a continuance, combined with his failure to obtain medical records casting serious doubt on the reliability of the testimony of the prosecution's sole witness and his failure to obtain and use earlier, contradictory statements of the witness concerning the attack, was an error so serious as to have deprived Mr. Tucker of a fair trial as guaranteed by the Sixth Amendment.

The state trial judge, having been informed of Mr. Tucker's trial counsel's failure to obtain and introduce favorable evidence and to request a continuance, nevertheless concluded that counsel's performance was within the range of reasonable professional assistance. As we have stated, such a conclusion is not only unreasonable, but its unreasonableness is not debatable among reasonable jurists. The trial judge suggested that the evidence of Anthony Henderson's changing versions of the assault and the effect of his injuries on his memory was irrelevant because it was not presented at trial. He recognized that he could only decide the case on the basis of the evidence that was before him, yet he failed to attach any significance to trial counsel's failure to adduce contrary evidence.

The trial court also concluded that Petitioner-Appellee Tucker had not been prejudiced by any deficiency in his trial counsel's representation. His basis for that conclusion, apparently, was that he was so influenced by the extent of Anthony Henderson's injuries and by his statement on the stand concerning Mr. Tucker's involvement in the assault, that he would not have considered any evidence that would have tended to impeach Mr. Henderson.

Applying the "reasonable jurist" standard, we conclude that reasonable jurists could not debate the unreasonableness of the state trial judge's application of the Strickland prejudice standard. We have previously set forth our conclusion that Petitioner-Appellee Tucker satisfied the

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first component of the Strickland standard before the state trial court. We reach the same conclusion concerning the second, prejudice, component of that standard.

The evidence of Anthony Henderson's inability to recall reliably the incidents surrounding his assault is substantial. Any reasonable finder of fact would necessarily have been influenced by the evidence of Mr. Henderson's lack of credibility based upon his defective memory. Applying the standard of proof necessary to return a conviction, a reasonable finder of fact would likely not have convicted Mr. Tucker of assault with intent to do great bodily harm had all of the relevant evidence been presented at trial. Accordingly, we conclude that had counsel requested a continuance and obtained and presented evidence tending to show that Anthony Henderson's memory concerning the assault was faulty, there is a reasonable probability that the outcome in Petitioner-Appellee's criminal case would have been different. Petitioner-Appellee, therefore, has demonstrated prejudice in satisfaction of the second component of the Strickland test for ineffective assistance of counsel.

The state trial court's reliance upon the extent of Anthony Henderson's injuries and his testimony at trial to conclude that the introduction of impeachment evidence would not have

affected the outcome of the trial is indefensible. In a case like Mr. Tucker's, in which the only evidence linking the defendant to the crime is the victim's testimony, evidence that the victim's memory of the crime has changed and has been affected by injuries would necessarily satisfy Strickland's "reasonable probability" standard. The extent of the victim's injuries and the fact that he testified at trial are not evidence of his credibility. While the finder of fact was able to make assessments concerning the witness' credibility, those assessments were made in the vacuum created by counsel's failure to obtain and present evidence bearing upon credibility, counsel's knowledge of the existence of such evidence notwithstanding. The trial court's suggestion that the evidence offered by Mr. Tucker's appellate counsel at the Ginther hearing was an "academic irrelevancy" convinces us that he made an unreasonable application of the Strickland standard.

We further conclude that the state trial court's conclusion that impeachment evidence would have been of little value given the extent of the witness' injuries and the witness' testimony at trial is so arbitrary as to be outside the universe of plausible, credible outcomes. The trial judge did not hear the evidence of Anthony Henderson's memory difficulties and state reasons for rejecting that evidence. Rather, he stated, in essence, that he would not consider the evidence because he had seen the badly injured witness testify at trial. Such an application of the Strickland standard is both offensive to the standard set forth by the Supreme Court and arbitrary. The Michigan Court of Appeals' decision, in which that court ignored the serious deficiencies in trial counsel's performance and overlooked the obvious resulting prejudice, is equally offensive to the Strickland precedent. The Court concludes, therefore, that the district court did not err in granting Petitioner-Appellee Tucker's petition for the writ of habeas corpus.

IV. CONCLUSION

We, therefore, AFFIRM the grant of the writ.

Notes:

[1] The Honorable Sandra S. Beckwith, United States District Judge for the Southern District of Ohio, sitting by designation.

DISSENT

SILER, Circuit Judge, dissenting. I respectfully dissent, for I believe that the decision by the Michigan Court of Appeals in *Michigan v. Tucker*, No. 153967 (Mich. Ct. App. Sept. 13, 1994), was not an unreasonable application of *Strickland v. Washington*, 466 U.S. 668 (1984), under the standard set out in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. 2254(d). My reasons for this conclusion are set out herein.

First, the majority goes beyond the determination of the district court in this case in finding that trial counsel was ineffective. The district court found that trial counsel was ineffective for failing to obtain and present Henderson's medical records as impeachment before the court. This may include the failure of defense counsel to request a continuance in order to obtain the records, but the district court did not state that as a ground for granting the writ. More specifically, however, the district court found that the failure of defense counsel to use the letter (that Henderson could not identify Tucker) from Henderson's civil attorney, the failure to obtain and use information showing that Henderson had initially implicated Wiley, and the failure to use Henderson's inconsistent

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 SOUTHERN DISTRICT OF OHIO
 COLUMBUS, OHIO

testimony at two preliminary hearings, did not amount to a deficient representation and, therefore, were not ineffective assistance of counsel. These findings were not appealed to this court. The only decision by the district court in granting the writ had to do with the failure to obtain and present Henderson's medical records which contradicted Henderson's testimony as to the length of time that he was in a coma and whether he had any broken ribs. Therefore, I confine my analysis to whether this conclusion by the district court below comported with the criteria of 28 U.S.C. 2254(d).

The majority correctly analyses the law when it says that we are bound by the decisions in *Nevers v. Killinger*, 169 F.3d 352 (6th Cir. 1999); and *Herbert v. Billy*, 160 F.3d 1131 (6th Cir. 1998). Thus, the conclusion from *Nevers*, as well as from the majority here, is that "the unreasonableness of [the Michigan Court of Appeals'] application of clearly established Supreme Court precedent will not be 'debatable among reasonable jurists,' if it is so 'offensive to existing precedent, so devoid of record support, or so arbitrary, as to indicate that it is outside the universe of plausible, credible outcomes.'" *Nevers*, 169 F.3d at 362 (internal citations omitted).

I cannot find that this failure to present the medical records of the prosecuting witness was so prejudicial to the case that the determination by the Michigan Court of Appeals that it was not prejudicial is devoid of record support, or so arbitrary as to indicate it is outside the universe of plausible, credible outcomes.

When counsel on appeal first raised the question of ineffective assistance of counsel, as the majority indicates, the case was remanded to the original trial judge for a Ginther hearing to determine ineffective assistance of counsel. This case differs substantially from the usual type of case involving ineffective assistance of counsel, because the trier of fact was the judge who presided at the Ginther hearing. Although on remand the trial judge never did look at the medical records involved, he still stated that if trial counsel erred, it did not affect the outcome of the trial, because his decision would have been the same. The test is whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Strickland, 466 U.S. at 694. Ordinarily, when a court makes this determination, there is no way to present the question back to the original fact finder, which likely would be a jury. Instead, this case presents an anomaly: the judge who tried the case said that it would not affect his decision. Tucker could not show to the Michigan Court of Appeals that, but for the claimed error, he would have had a reasonable chance for acquittal. If I were a state appellate judge, it is possible that I might have reached a different conclusion. However, that does not mean that the conclusion reached by the Michigan Court of Appeals was unreasonable. It was not devoid of record support, for the finder of fact said that it would not have affected his decision. It was also not arbitrary. Therefore, I would reverse the granting of the writ by the district court in this case.

318 F.2d 852 (4th Cir. 1963), 8732, *Turner v. State of Maryland*

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318 F.2d 852 (4th Cir. 1963)

Clarence Irvin TURNER, Appellant,

v.

STATE OF MARYLAND, Appellee.

No. 8732.

United States Court of Appeals, Fourth Circuit.

June 5, 1963

Argued Jan. 21, 1963.

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Ronald P. Sokol, Milwaukee, Wis. (Court-assigned counsel) (Daniel J. Meador, Charlottesville, Va., on brief), for appellant.

Russell R. Reno, Jr., Asst. Atty. Gen. of Maryland (Thomas B. Finan, Atty. Gen. of Maryland, on brief), for appellee.

Before SOBELOFF, Chief Judge, and BOREMAN and J. SPENCER BELL, Circuit judges.

SOBELOFF, Chief Judge.

This is the sequel to an earlier appeal by Clarence Irvin Turner, a state prisoner who is serving a sentence of five years for participation with four others in an attempted armed robbery. The former appeal was from an order of the District Court denying without a hearing his petition for a writ of habeas corpus, and we remanded the case for a hearing to determine whether the representation afforded Turner at his trial was, as he claimed, so inadequate as to constitute a denial of the effective assistance of counsel. *Turner v. State of Maryland*, 303 F.2d 507 (4th Cir. 1962).

On this disputed issue the District Court has now conducted a hearing and taken testimony from Turner and the lawyer who had been appointed to defend him in the state proceedings. 206 F.Supp. 111. The record developed at the hearing supports the District Court's conclusion that the trial lawyer did in fact make an effort before trial to secure information necessary to Turner's

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FOURTH CIRCUIT
BALTIMORE, MD.

defense. Yet, admittedly, the attorney failed to consult with his client until less than half an hour before the time set for trial, although his appointment by the court preceded the trial date by two weeks. This neglect, we, like the District Court, are unable to condone.

A sense of professional responsibility should have suggested to the lawyer that the omission to communicate with his

Page 854.

client during the two weeks available before trial not only constituted a deplorable disregard of the client's feelings, but involved the risk of overlooking significant information which the client might have in his possession or be able to point to. Normally, in the absence of clear proof that no prejudice resulted, we should be obliged to treat the lawyer's representation as inadequate and the trial as falling short of the standards of due process guaranteed by the Fourteenth Amendment.

However, the hearing which the District Court conducted ascertained in considerable detail not only what the attorney did and failed to do before trial but demonstrated beyond doubt that the accused in fact had no information to communicate to the lawyer which could have been helpful to the defense. In close interrogation of the prisoner and the attorney, it was clearly shown to the District Judge's satisfaction that during their short consultation Turner told the lawyer that the statement he had given to the police was true and that Turner in fact was involved in the attempted robbery.

Apparently, the appellant even now concedes that in so advising the lawyer, he intended to admit that he sat in the get-away car in front of the victim's store while his co-defendants entered to rob him. [1] Turner seems, however, to have thought that his auxiliary role did not constitute guilt in law. He admitted to the District Judge that he knew the purpose for which his co-defendants went into the store while he remained in the car with the engine running. Needless to say, the fact that Turner did not accompany the others but sat in the getaway car does not absolve him. The circumstances could possibly be considered in mitigation of the sentence and were called to the jury's attention. Neither to the lawyer in the brief pre-trial interview nor later at the plenary hearing in the District Court, when there was a deeper inquiry, did Turner suggest any other fact of record for defense.

The voluntariness of the appellant's statement to the police was at to time contested and was independently proved at the District Court hearing.

In these circumstances there is no ground for saying that the legal representation afforded Turner was so inadequate as to warrant the invalidation of his conviction and sentence. See and compare: *Jones v. Cunningham*, 313 F.2d 347 (4th Cir. 1963); *Edgerton v. State of North Carolina*, 315 F.2d 676 (4th Cir. 1963); *Jones v. Cunningham*, 297 F.2d 851 (4th Cir. 1962);

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Snead v. Smyth, 273 F.2d 838 (4th Cir. 1959); *Brown v. Smyth*, 271 F.2d 227 (4th Cir. 1959).

Nevertheless, we must condemn the conduct of this court-appointed lawyer. Whether a lawyer is employed by a prosperous defendant at a handsome fee or serves an indigent without compensation in the discharge of the duty resting upon him as an officer of the court, the canons of our profession require his 'entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.' American Bar Association, Canons of Professional Ethics, Canon 15. If the spirit of this canon had been observed, no occasion would have arisen for a post-conviction inquiry into the quality of counsel's performance.

Affirmed.

Notes:

[1] The car, bought by the appellant and his co-defendants, was titled in Turner's name because of the five purchasers only he was of legal age.

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Noel Michael Lyles, #174105,	)	2012-CP-42-1955
	)	
Applicant,	)	
	)	
v.	)	MEMORANDUM OF LAW
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for armed robbery and kidnapping (09-GS-42-2199, count 1 and 2), assault and battery of a high and aggravated nature (09-GS-42-2200) and grand larceny (09-GS-42-2201). He was represented by J. Roger Poole, Esquire and Kathleen J. Hodges, Esquire at trial. On November 9, 2009, the Applicant proceeded to trial after which a jury found him guilty of armed robbery, assault and battery of a high and aggravated nature, and grand larceny. The jury returned a verdict of not guilty on the kidnapping charge. He was sentenced by the Honorable J. Derham Cole to confinement for life without parole for armed robbery, a concurrent ten (10) years for assault and battery of a high and aggravated nature, and a consecutive five (5) years for grand larceny.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. He was represented by Wanda H. Carter on appeal. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Lyles, Op. No. 2012-UP-190 (filed March 14, 2012). The Remittitur was submitted on March 30, 2012.

Applicant filed a PCR Application on May 8, 2012. The Respondent filed its Return on September 11, 2012. A PCR Hearing was subsequently held on April 5, 2013. Applicant was present and represented by Paul C. MacPhail, Esquire. Suzanne H. White, Esquire, represented the Respondent, State of South Carolina. At the hearing, the Applicant testified on his own behalf. Kathleen Hodges, Esquire, and J. Roger Poole, Esquire, both testified on Respondent's behalf.

Following testimony, this Court directed the parties to submit memoranda addressing Counsels' representation in light of Lounds v. State, 380 S.C. 454, 463, 670 S.E.2d 646, 650 (2008). Respondent's positions regarding the issue are set forth below.

DISCUSSION

Applicant's Burden of Proving Prejudice

When an ineffectiveness claim is presented the defendant must show that counsel's representation was deficient. Deficient representation amounts to conduct that is not objectively reasonable under the circumstances. Strickland v. Washington, 466 U.S. 668, 688, 104 S.Ct. 2052 (1984). In addition, the Applicant must show prejudice by establishing that the outcome would have been different but for counsel's deficient performance. Strickland, 466 U.S. at 694.

Respondent submits that the Applicant failed to meet his burden of proof of establishing that the alleged deficient conduct of either of his Counsel affected the outcome of his trial. Respondent also submits that Applicant was not prejudiced by any alleged deficient performance because of the overwhelming evidence against him.

Applicant was represented by two competent attorneys at his trial, Kathleen Hodges and J. Roger Poole. As the record and testimony reflected, Mr. Poole first met with the Applicant the

Friday before his trial was set to begin the next Monday. (ROA p. 10). Applicant had been arrested on the charges in March 2009 and the trial was to begin on November 9, 2009.

At the beginning of trial, after Applicant expressed concern over his lack of meetings with Poole, Poole indicated to the court that he had reviewed discovery materials and was not aware of any additional witnesses that should be called. (ROA p. 13). However, because of the apparent conflict between the Applicant and Mr. Poole, the trial court recessed from Monday, November 9th, until Thursday, November 12th. During that time, the court also appointed Kathleen Hodges, at Applicant's request, to assist in representing Applicant at trial. (ROA p. 25). On November 12th, Hodges indicated to the court that she was prepared to proceed with the trial, fully understood the legal issues in the case and the issues Applicant had, and the only thing that more time would offer is the chance to be more concrete with the facts of the case. (ROA p. 28). However, Mr. Poole was still present to assist Mrs. Hodges.

Hodges indicated to the court that there were no additional witnesses that needed to be contacted, but she had subpoenaed someone independently after reviewing the case file and discovery materials. (ROA p. 28-9). Hodges indicated that she had discussed the case with Applicant and Mr. Poole and received and reviewed all discovery materials. (ROA p. 29). Hodges made several pre-trial motions on Applicant's behalf, including a motion for a change of venue based upon publicity related to a separate incident, and a request for a Neil v. Biggers hearing regarding the photo line-up identification of Applicant.

In this case, the Applicant was accused of stealing a truck, assaulting a woman and stealing personal items while driving the stolen truck, and then being arrested in possession of the stolen truck and items. Applicant was identified through a photo line-up by the two victims as the person who robbed each of them. (ROA p. 182-3). Additionally, the Applicant was

arrested driving the truck stolen from one of the victims, with items in the truck that belonged to the second victim. The two witnesses who saw Applicant robbing and assaulting the second victim also identified Applicant. (ROA p. 206; 213). The second victim was able to recall the license tag number of the vehicle that was being driven by the man who attacked her. (ROA p. 191). Finally, the passenger in the stolen truck identified the Applicant as the person in the truck who attempted to sell several rings to him. (ROA p. 237-8). The jury found the Applicant guilty of armed robbery, assault and battery of a high and aggravated nature, and grand larceny over \$5,000. The jury acquitted Applicant of the kidnapping charge. The deliberations took only approximately two hours.

Although Applicant focused on the lack of time that Mr. Poole spent preparing for the case or meeting with Applicant, the standard is not based upon the particular actions of Mr. Poole, but rather, on whether or not the outcome of Applicant's trial would have been different had different actions been taken by Applicant's attorneys, which included both Poole and Hodges. Respondent argues that the Applicant failed to establish that had his attorneys taken different actions or had more time to prepare, the outcome of his trial would have been any different.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Furthermore, the "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980).

When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

Unlike Lounds, Applicant does not allege that there were additional witnesses that should have been interviewed or subpoenaed for trial. In fact, Applicant offered no witnesses that should have been called, defenses that could have been developed, or information that would have assisted at trial that either Counsel failed to obtain because of the lack of preparation time or investigation. At the hearing, Poole testified that he had previously handled cases as serious as death penalty cases. Poole testified that although he did not meet with the Applicant until the Friday before trial, he had prepared for trial. This preparation included reviewing all discovery materials, including the lengthy witness statements. Poole testified that he met with the Applicant, reviewed the elements of each charge and discussed Applicant's understanding of what each witness would offer.

Hodges testified that she received a copy of the entire case file on the Monday she was contacted to assist in the case and met with Poole. Hodges also testified that she met with the Applicant several times prior to trial and discussed concerns regarding identifications and publicity from a separate incident. Hodges also testified that she was not informed of any potential witnesses by Applicant, but instead subpoenaed a witness on her own following review of the case file. Hodges also testified that Poole was able to assist her during cross-examination by pointing out various inconsistencies in witness statements and testimony. Hodges testified that she was prepared for trial and only believed that she could have possibly done additional research had she had more time to prepare.

Although preparation time for trial was limited, Respondent submits that the Applicant failed to prove that there was any deficient conduct on behalf of Counsel and that neither Counsel could have or would have done if they had more time to prepare. Even if this Court found that there was deficient conduct on behalf of either Counsel, Respondent submits that because of the overwhelming evidence of guilt, there was no prejudice. "[N]o prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)).

CONCLUSION

WHEREFORE, the Respondent respectfully requests the court to deny Applicant's claim of ineffective assistance of counsel for failure to meet burden of proof and overwhelming evidence and dismiss the post-conviction relief application.

Respectfully submitted,

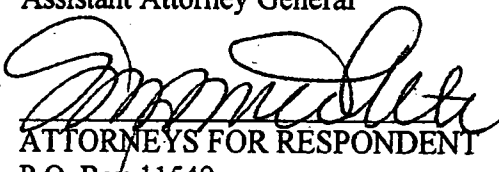
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
P.O. Box 11549
Columbia, S.C. 29211

August 22, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Noel Michael Lyles,

2012-CP-42-1955

)
)
) Applicant,

v.

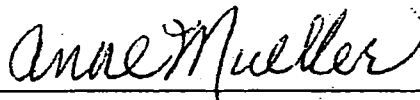
) CERTIFICATE OF SERVICE BY MAIL
)
)
)

State of South Carolina,

)
)
) Respondent.
_____)

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Respondent's Motion Memorandum of Law in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Paul C. MacPhail, Esquire
MacPhail Law Firm, LLC
P.O. Box 6321
Spartanburg, South Carolina 29304



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 22nd day of August, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Noel Michael Lyles, #174105,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-1955

ORDER OF DISMISSAL

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M. HOPE BLACKBURN

This matter comes before this court by way of an application for post-conviction relief filed on May 8, 2012. The Respondent filed its Return on September 11, 2012. An evidentiary hearing into the matter was convened on April 5, 2013, at the Spartanburg County Courthouse. The Applicant was present and represented by Paul C. MacPhail, Esquire. Suzanne H. White, Esquire, represented the Respondent, State of South Carolina.

At the hearing, the Applicant testified on his own behalf. Kathleen Hodges, Esquire, and J. Roger Poole, Esquire, both testified on Respondent's behalf. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, the trial transcript, Applicant's exhibits and memoranda provided by both parties.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the May 2009 term of the Spartanburg County Grand Jury for armed robbery and kidnapping (09-GS-42-2199, count 1 and 2), assault and battery of a high and aggravated nature

(09-GS-42-2200) and grand larceny (09-GS-42-2201). He was represented by J. Roger Poole, Esquire and Kathleen J. Hodges, Esquire at trial. On November 9, 2009, the Applicant proceeded to trial after which a jury found him guilty of armed robbery, assault and battery of a high and aggravated nature, and grand larceny. The jury returned a verdict of not guilty on the kidnapping charge. He was sentenced by the Honorable J. Derham Cole to confinement for life without parole for armed robbery, a concurrent ten (10) years for assault and battery of a high and aggravated nature, and a consecutive five (5) years for grand larceny.

A timely Notice of Appeal and Anders brief were filed on Applicant's behalf. He was represented by Wanda H. Carter on appeal. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Lyles, Op. No. 2012-UP-190 (filed March 14, 2012). The Remittitur was submitted on March 30, 2012.

ALLEGATIONS

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of trial counsel, in that;
 - a. Counsel failed to "ask for continuance to prepare for trial."
 - b. Counsel failed to adequately prepare for trial, in that;
 - i. Counsel failed to meet with Applicant in a timely manner, investigate, or "present motion of discovery in a timely manner."
 - c. Counsel failed to notify Applicant of kidnapping charge, challenge the sufficiency of the kidnapping indictment prior to trial or make a motion for a continuance due to short notice of kidnapping charge;
 - d. Counsel engaged in a conflict of interest by continuing to represent Applicant despite

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- Applicant's request to have alternate counsel appointed.¹
- e. Counsel failed to challenge first most serious conviction based on aggravating circumstances.
 2. Ineffective assistance of appellate counsel, in that;
 - a. Appellate counsel failed to "submit correct argument of identification on appeal."
 3. Chain of custody was violated, in that;
 - a. There were "discrepancies of testimony of investigators Williams and Bryant."
 - b. "LD. investigator Nix failed under S.C. Code Ann. § 16-3-1535 to implement itemized list of property for use of evidence for trial."
 4. Violation of the Eighth Amendment, in that;
 - a. Trial judge failed to consider relevant mitigating evidence during sentencing.
 - b. Trial judge failed to instruct jury that latest offense was not a repetitive offense.
 - c. Trial judge and counsel failed to instruct jury that upon conviction Applicant would receive a life sentence without parole.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e)).

¹ Applicant asked trial judge to remove Mr. Poole as counsel and requested that Kathy Hodges represent him instead. Initially, the court denied this request, but prior to the commencement of trial, Kathy Hodges agreed to assist in Applicant's defense alongside Mr. Poole.

SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

*Failure to move for a continuance to prepare for trial and
Failure to adequately investigate and prepare for trial and failure to meet with Applicant in a
timely manner and present discovery materials in a timely manner*

Both the Applicant and Poole testified that Poole first met with the Applicant the Friday before Applicant's trial was set to begin the next Monday. Applicant had been arrested on the charges in March 2009 and the trial was to begin on November 9, 2009. Applicant testified that

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he was not aware that he had an attorney until he received the notice that the State intended to seek life without parole in October and the trial was set for November. Applicant testified that at the beginning of trial, Applicant expressed concern over his lack of meetings with Poole and wanted another attorney to represent him. Poole indicated to the court that he had reviewed discovery materials and was not aware of any additional witnesses that should be called. Applicant testified that Poole never made a motion for a continuance to have more time to prepare, never interviewed the witnesses from the car wash, never talked with the Solicitor's office about a possible plea bargain, and never subpoenaed the victim's medical records to either impeach the victim's alleged timeline nor to verify her medical condition.

The Applicant testified that although he tried desperately to relieve Poole, the trial court denied the Applicant's request to relieve Poole and proceed *pro se*. However, because of the apparent conflict between the Applicant and Mr. Poole, the trial court recessed from Monday, November 9th, until Thursday, November 12th. During that time, the court also appointed Kathleen Hodges, at Applicant's request, to assist in representing Applicant at trial. On November 12th, Hodges indicated to the court that she was prepared to proceed with the trial, fully understood the legal issues in the case and the issues Applicant had, and the only thing that more time would offer is the chance to be more concrete with the facts of the case. However, Mr. Poole was still present to assist Mrs. Hodges.

At the hearing, Poole testified that he had previously handled cases as serious as death penalty cases. Poole testified that although he did not meet with the Applicant until the Friday before trial, he had prepared for trial. This preparation included reviewing all discovery materials, including the lengthy witness statements. Poole testified that he met with the Applicant, reviewed the elements of each charge and discussed Applicant's understanding of

what each witness would offer. However Poole acknowledged that he did not conduct an independent investigation, did not visit the scene of the crime, and did not interview any witnesses.

The Applicant testified that Hodges never requested a motion for continuance in order to prepare more for the trial. Hodges testified that she never considered filing a motion for continuance at that time because she did feel prepared to represent Applicant at trial. Hodges testified that she had subpoenaed someone independently after reviewing the case file and discovery materials, but was not aware of any other witnesses that Applicant wanted called. Hodges also testified that she had discussed the case with Applicant and Mr. Poole and received and reviewed all discovery materials. The record reflects that Hodges made several pre-trial motions on Applicant's behalf, including a motion for a change of venue based upon publicity related to a separate incident, and a request for a Neil v. Biggers hearing regarding the photo line-up identification of Applicant. Applicant introduced two documents and explained how he believed his attorneys should have investigated further based upon their content. Exhibit #1, an affidavit, and Exhibit #2, the investigative report. Also, Applicant testified that that SLED should have been involved in the investigation of the case since one of the victims was an Officer's wife.

Hodges also testified that she met with the Applicant several times prior to trial and discussed concerns regarding identifications and publicity from a separate incident. Hodges also testified that she was not informed of any potential witnesses by Applicant, but instead subpoenaed a witness on her own following review of the case file. Hodges also testified that Poole was able to assist her during cross-examination by pointing out various inconsistencies in

witness statements and testimony. Hodges testified that she was prepared for trial and only believed that she could have possibly done additional research had she had more time to prepare.

In this case, the Applicant was accused of stealing a truck, assaulting a woman and stealing personal items while driving the stolen truck, and then being arrested in possession of the stolen truck and items. Applicant was identified through a photo line-up by the two victims as the person who robbed each of them. Additionally, the Applicant was arrested driving the truck stolen from one of the victims, with items in the truck that belonged to the second victim. The two witnesses who saw Applicant robbing and assaulting the second victim also identified Applicant. The second victim was able to recall the license tag number of the vehicle that was being driven by the man who attacked her. Finally, the passenger in the stolen truck identified the Applicant as the person in the truck who attempted to sell several rings to him. The jury found the Applicant guilty of armed robbery, assault and battery of a high and aggravated nature, and grand larceny over \$5,000. The jury acquitted Applicant of the kidnapping charge. The deliberations took only approximately two hours.

To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). Furthermore, the "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from counsel's

alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

This Court finds that Applicant failed to establish that had his attorneys taken different actions or had more time to prepare, the outcome of his trial would have been any different. Applicant did not allege that there were additional witnesses that should have been interviewed or subpoenaed for trial. In fact, other than subpoenaing the medical records of the victim, doing an independent investigation or demanding a SLED investigation, Applicant offered no witnesses that should have been called, defenses that could have been developed, or information that would have assisted at trial that either Counsel failed to obtain because of the lack of preparation time or investigation. All witnesses and their statements were known to his counsel prior to trial based upon the discovery responses from the State. The Applicant failed to demonstrate how the information in the documents introduced would have affected the outcome of the case.

By his own admission, Poole's late entry into the case, failure to independently investigate the case and failure to question witnesses is deficient. However, after hearing the testimony and reviewing both parties' memoranda, this Court finds that although there was deficient conduct on behalf of Counsel, there was no evidence of prejudice to the Applicant. Applicant offered no witnesses or specific testimony to show how additional preparation would have resulted in a different outcome or that he would have had a defense if he had had additional time to prepare for trial. Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997). See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (where PCR applicant fails to establish what evidence he could have procured had counsel moved for a continuance, he fails to establish how he was prejudiced by counsel's incomplete preparation); Kibler v. State, 267 S.C. 250, 227

S.E.2d 199 (1976)(Court will not speculate concerning what might have occurred if counsel had conducted further investigation).

Further, this Court finds that because of the overwhelming evidence of guilt, there was no prejudice. "[N]o prejudice occurs, despite trial counsel's deficient performance, where there is otherwise overwhelming evidence of the defendant's guilt. Smith v. State, 386 S.C. 562, 566, 689 S.E.2d 629, 631 (2010) (citing Rosemond v. Catoe, 383 S.C. 320, 325, 680 S.E.2d 5, 8 (2009)). Therefore, this claim is denied and dismissed.

Failure to notify Applicant of kidnapping charge, challenge the sufficiency of the kidnapping indictment prior to trial or make a motion for a continuance due to short notice of kidnapping charge

The Applicant testified that Poole failed to notify Applicant of the indictments, including the kidnapping charge. However, Poole testified that he did not recall Applicant indicating that he was surprised when they discussed the kidnapping charge. The jury ultimately acquitted Applicant of the kidnapping charge. This Court finds that this allegation lacks merit. This Court finds the Applicant's testimony to lack credibility, in particular when Applicant was aware of the intent to seek life without parole in October. This Court finds Poole's testimony that he reviewed all charges and the required elements of each charge with the Applicant prior to trial to be credible. Therefore, this claim is denied and dismissed.

Operated under a conflict of interest when continued to represent Applicant despite Applicant's request to have alternate counsel appointed.²

As discussed earlier, Applicant was represented by two attorneys at his trial, Kathleen Hodges and J. Roger Poole. As the record and testimony reflected, Mr. Poole first met with the Applicant the Friday before his trial was set to begin the next Monday. Applicant had been

² Applicant asked trial judge to remove Mr. Poole as counsel and requested that Kathy Hodges represent him instead. Initially, the court denied this request, but prior to the commencement of trial, Kathy Hodges agreed to assist in Applicant's defense alongside Mr. Poole.

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arrested on the charges in March 2009 and the trial was to begin on November 9, 2009. At the beginning of trial, after Applicant expressed concern over his lack of meetings with Poole, Poole indicated to the court that he had reviewed discovery materials and was not aware of any additional witnesses that should be called. However, because of the apparent conflict between the Applicant and Mr. Poole, the trial court recessed from Monday, November 9th, until Thursday, November 12th.

During that time, the court also appointed Kathleen Hodges, at Applicant's request, to assist in representing Applicant at trial. On November 12th, Hodges indicated to the court that she was prepared to proceed with the trial, fully understood the legal issues in the case and the issues Applicant had, and the only thing that more time would offer is the chance to be more concrete with the facts of the case. However, Mr. Poole was still present to assist Mrs. Hodges. Poole did not actively participate in the Applicant's defense by calling any witnesses or cross-examining any witnesses. Hodges testified that Poole assisted her at trial by giving her feedback and information regarding particular witnesses' credibility.

The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id.; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

This Court finds that the Applicant failed to meet his burden of proof as to this claim. There was no testimony or evidence of a conflict of interest on Poole's behalf and the fact that he

remained on Applicant's case did not detrimentally affect Applicant's case, but as Hodges testified, he was helpful during the trial. Therefore, this claim is denied and dismissed.

Failure to challenge first most serious conviction based on aggravating circumstances.

Applicant testified that Counsel never tried to attack the first most serious conviction of burglary, which resulted from a plea eleven years prior. The Applicant has failed to meet his burden of proof as to this claim. Applicant offered no testimony or evidence to indicate that if the prior conviction had been attacked, it would have been found ineligible as a prior offense for purposes of the life without parole statute, S.C. Code Ann. § 17-25-45 (1976). Therefore, this claim is denied and dismissed.

Ineffective Assistance of Appellate Counsel

The Applicant also alleged ineffective assistance of appellate counsel for counsel's failure to raise other potentially viable issues on appeal. Specifically, the Applicant indicated that appellate counsel never contacted Applicant regarding his opinion on viable issues and should have raised issues regarding the conduct of the judge and the judge's failure to grant Applicant's motion for continuance or motion for change of venue. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 539, 539 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

As the record reflects, appellate counsel filed an Anders brief. In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if that attorney believes the client's appeal is frivolous and without merit. 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967). The Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief "referring to anything in the record that might arguably support the appeal." Id. at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498. Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The court then is obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." Id. According to Anders, if the reviewing court finds the appeal is frivolous, "it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires." Id. at 744, 87 S.Ct. at 1400, 18 L.Ed.2d at 498.

This Court finds that the Applicant has failed to meet his burden of proof of establishing that appellate counsel was ineffective. Applicant failed to prove that the issues he discussed had

merit. Further, this Court finds that an Anders brief was filed; therefore, all properly preserved issues were reviewed and the appeal was denied. Therefore, this claim is denied and dismissed.

Improper Chain of Custody

The Applicant alleged that there was no chain of custody established for the items stolen from the victims and found in the stolen truck. This Court finds that this issue lacks merit. The items were identified by the victims as their items and the items were recovered in the truck when the Applicant was arrested. Therefore, this Court finds that the Applicant failed to meet his burden of proof as to this claim and it is denied and dismissed.

Violations of Eighth Amendment

The Applicant alleged that his Eighth Amendment rights were violated when the trial court failed to consider relevant mitigating evidence during sentencing, failed to instruct the jury that the latest offense was not a repetitive offense, and failed to instruct jury that the Applicant would receive a sentence of life without parole upon his conviction. The Applicant appeared to include these allegations primarily as allegations of ineffective assistance of counsel, for Counsels' failure to present mitigating information to the trial court and failure to request that the Applicant be able to address the jury regarding the mandatory life without parole sentence. This Court finds that the Applicant has failed to meet his burden of proof as to this claim. The Applicant's case was not a capital case and there was no separate sentencing hearing, nor did the trial judge have any sentencing discretion because of § 17-25-45. Further, there is no right which provides an opportunity for the Applicant to speak to the jury regarding his possible punishment if convicted. Therefore, this Court finds that these claims lack merit and are denied and dismissed.

SUMMARY

Accordingly, this Court finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsels' performance. There is no evidence that the outcome of the proceedings would have changed based upon any of the allegations of deficiency. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

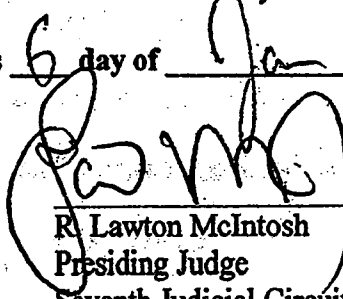
This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

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IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6 day of Jan, 2013
2014



R. Lawton McIntosh
Presiding Judge
Seventh Judicial Circuit

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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

CASE NO.: 2012-CP-42-1955

NOEL MICHAEL LYLES,
#174105,

Applicant,

vs.

State of South Carolina,

Defendant.

MOTION TO ALTER OR AMEND
JUDGMENT
SCRCP 59(e)

TO: THE HONORABLE R. LAWTON MCINTOSH, AND
SUZANNE H. WHITE, ATTORNEY FOR STATE OF SOUTH CAROLINA,
YOU WILL PLEASE TAKE NOTICE that the Applicant, Noel

Michael Lyles, by and through his undersigned attorney, hereby
moves the Court for the Court to reconsider the Order of
Dismissal signed by the Honorable R. Lawton McIntosh on January
6, 2014, clocked on January 9, 2014, mailed by the Clerk on
January 13, 2014, and received by the undersigned attorney on
January 14, 2014, and particularly to reconsider the following
findings of fact and conclusions of law, as follows:

1) The finding on page 8, second full paragraph, second
sentence, that "although there was deficient conduct on the part
of Counsel, there was no evidence of prejudice to the
Applicant."

2) The finding on page 9, first full paragraph, first
sentence, that "because of the overwhelming evidence of guilt,
there was no prejudice."

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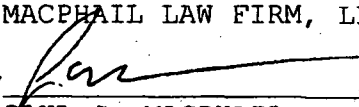
3) The finding on page 9, last sentence of first full paragraph, "therefore, this claim is denied and dismissed".

4) The ultimate conclusion that "this application for post-conviction relief must be denied and dismissed with prejudice.

This motion is made based upon Applicant's contention that the testimony from the PCR trial, the evidence in the record, and the arguments in the Memorandum of Law submitted to the court, are sufficient to support the granting of the Applicant's petition.

SO MOVED.

MACPHAIL LAW FIRM, LLC

By 

PAUL C. MACPHAIL

Attorney for the Applicant

Post Office Box 6321

Spartanburg, South Carolina 29304

(864) 582-4560 (phone)

(864) 585-7335 (fax)

January 17, 2014

Spartanburg, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Noel Michael Lyles, #174105,

Applicant,

vs.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

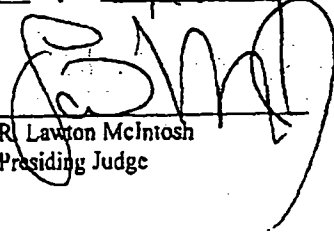
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ORDER

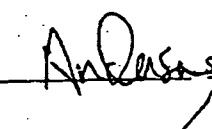
This matter comes before the Court by way of Applicant's Motion for Reconsideration pursuant to Rule 59(e), SCRCPP. The Respondent made its Return to this response on February 4, 2014.

The Order of Dismissal in this matter was signed by me on January 6, 2014. Based upon careful reconsideration of all the evidence in this case and upon full consideration of Applicant's response and objections, this Court is not persuaded to alter or amend the judgment. This Court further finds that oral argument would not aid in the reconsideration of the original judgment. Therefore, this Court finds that the Order of Dismissal, which was signed on January 6, 2014, shall stand as it was written.

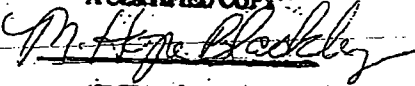
AND IT IS SO ORDERED this 7 day of February, 2014.


R. Lawton McIntosh
Presiding Judge

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 South Carolina

Page 1 of 1

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DATED 3/5/14

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

NOEL MICHAEL LYLES,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying appellant's motion to suppress Karen Mathis' out-of-court identification naming appellant as the perpetrator because her identification was not reliable as she made an identification after gaining the benefit of watching two days of television news coverage which showed the events in question captured from the camera videotape at the scene. The error prejudiced appellant because the identification in question was the sole piece of incriminating evidence the state possessed against him in the case.

STATEMENT OF CASE

Appellant Noel Lyles was convicted per jury trial of armed robbery, assault and battery of a high and aggravated nature and grand larceny during the November 2009 term of the Spartanburg County General Sessions Court before The Honorable J. Derham Cole, Judge. Appellant was sentenced to imprisonment for a period of life without parole in the armed robbery conviction, ten years on the assault conviction, and five years, consecutive, on the grand larceny conviction.

Appellant appealed. This brief follows.

ARGUMENT

The trial judge erred in denying appellant's motion to suppress Karen Mathis' out-of-court identification naming appellant as the perpetrator because her identification was not reliable as she made an identification after gaining the benefit of watching two days of television news coverage which showed the events in question captured from the camera videotape at the scene. The error prejudiced appellant because this identification in question was the sole piece of incriminating evidence the state possessed against him in the case.

At trial, Karen Mathis testified that on March 7, 2009, she was washing her truck at Lyman Car Wash when a male approached her and asked if he could help wash her vehicle. Mathis stated that she refused his offer. Then, according to Mathis' testimony, when the man approached again, he went to the front of her vehicle, jumped inside, and drove off. R. p. 149, line 1. – p. 157, l. 25.

Later on during the late afternoon/evening hours of March 7, 2009, Amy Sandifer testified that she was taking her routine afternoon walk in her neighborhood when a male drove up, got out of his truck, and then approached her and demanded that she give him her "s__". Sandifer testified that when she refused to do so, the man hit her on the nose, and later hit her with a beer bottle. Sandifer claimed that while they tussled the man attempted to take her ring off her finger. Ultimately, Sandifer relinquished her ring to the man. At that point, the perpetrator fled. R. 169, l. 17 – p. 180, l. 24.

Both Mathis and Sandifer made out-of-court identifications selecting appellant's picture from a photographic lay-out and claimed that he was the perpetrator in their cases. R. 159, l. 1 – p. 161, l. 21; R. 181, l. 10 – p. 183, l. 9. Prior to trial, however, defense

counsel moved for an in-camera hearing on Mathis' identification made in the case. R. 26, l. 20 -25. An in-camera hearing followed.

During the in-camera hearing, Mathis stated that on March 8, 2009, which was twenty-four hours after the crimes were committed, a police officer appeared at her home and presented a photographic lay-out for her viewing. Mathis stated that she did not view the photograph because she was nervous and upset, and could not remember what the perpetrator looked like, and because she was not comfortable looking at the photographs at that time. Then, on March 9, 2009, after having seen television footage from the camera recording the events at the crime scene, Mathis admitted that she viewed a photographic lay-out on that date and selected appellant's picture and identified him as the perpetrator in the case. R. 74, l. 20 – p. 75, l. 3; R. 76, l. 25 – p. 82, l. 25.

Reliability is the linchpin in determining the admissibility of the identification testimony. State v. Rice, 375 S.C. 302 652 S.C.2d 4091 (2008); Manson v. Brathwaite, 432 U.S. 98 (1977). Challenges to the admissibility of identifications emanate from pre-trial identification procedures that are unduly suggestive. State v. Moore 343 S.C. 282, 540 S.E.2d 445 (2000). A court must consider the totality of the circumstances in order to determine whether identification may be reliable even when the procedure has been suggestive. Neil v. Biggers, 409 U. S. 188 (1972). The Biggers Court outlined the factors to be considered in evaluating the likelihood of a misidentification. They are as follows:

1. The opportunity of the victim to view the accused
2. The witness' degree of attention
3. The accuracy of the witness' prior description
4. The level of certainty demonstrated at the confrontation; and
5. The length of time between the crime and confrontation.

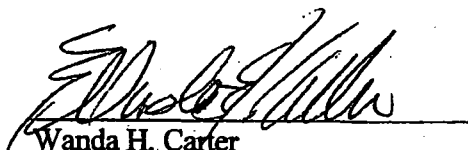
Although Mathis stated she observed the perpetrator for twenty minutes during daylight light hours; nonetheless, there were confrontation issues in the case. In other words, within a twenty-four hour period, Mathis was too nervous and uncomfortable, and too unsure of herself to view a photographic lay and make an attempt to identify the perpetrator in the case. This means that Mathis' level of certainty, or lack of certainty, with respect to her identification was at issue. It is troubling and disturbing that within a twenty-four hour period Mathis was unsure of what the perpetrator looked like and unsure of whether she could make an identification in the case. Thus, if Mathis was too unstable and uncertain to make an identification as early as twenty-four hours after the event, then certainly she was unable to miraculously and independently morph into a more certain identifier after forty-eight hours. Herein lies the issue. After viewing television footage of the camera video of the crime caught on video tape between March 7-8, 2009, Mathis was able to become sure and certain of her identification of appellant as the perpetrator when shown the photographic lay-out by police on March 9, 2009. Mathis made an identification after having received the benefit of the television coverage in question. Thus, Mathis' out-of-court identification was unreliable and should have been suppressed at trial.

A defendant may be deprived of due process of law by an identification procedure that is unnecessarily suggestive and conducive to irreparable mistaken identification. State v. Mansfield, 343 S.C. 66, 538 S.E.2d 257 (Ct. App. 2000). The admission of Mathis' out-of-court identification of appellant as the perpetrator was error which violated the Fourteenth Amendment Due Process Clause.

CONCLUSION

Based on the following argument, appellant's convictions and sentences should be reversed.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of December, 2010.